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Vol. I

TRANSCRIPT OF RECORD

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Supreme Court of the United States

OCTOBER TERM, 1937

No. 313

LONE STAR GAS COMPANY, APPELLANT,

vs.

STATE OF TEXAS, THE RAILROAD COMMISSION
OF TEXAS, ET AL.

APPEAL FROM THE COURT OF CIVIL APPEALS FOR THE THIRD
SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS

FILED AUGUST 13, 1937.

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VOL. I

INDEX.

	Original	Print
Record from District Court of Travis County.....	1	1
Caption (omitted in printing) ..	1	
Plaintiffs' second amended original petition.....	2	1
Exhibit "A"—Opinion and order of Railroad Com- mission	19	12
Exhibit "B"—Order of Federal Court staying pro- ceedings, No. 467-E.....	20	117
Order staying proceedings	26	121
Order of continuance..... (omitted in printing) ..	29	
Docket entry as to pleas..... (omitted in printing) ..	30	
Second amended answer of Lone Star Gas Co.....	31	122
Order overruling pleas to jurisdiction and in abate- ment (omitted in printing).....	145	
Plaintiffs' second supplemental petition.....	146	153

	Original	Print
Record from District Court of Travis County—Continued.		
Second supplemental answer of defendant, Lone Star Gas Company	162	161
Agreement and stipulations re orders of continuance (omitted in printing)	197	
Order of continuance..... (omitted in printing) ..	199	
Order overruling defendant's pleas to the jurisdiction and pleas in abatement	200	171
Order overruling exceptions and demurrers of defendant, Lone Star Gas Company	203	172
Order sustaining defendant's special exceptions and demurrers and overruling plaintiffs' general demurrer to defendant's second amended original answer (omitted in printing)	207	
Order sustaining special exceptions in plaintiffs' second supplemental petition (omitted in printing)	213	
Defendant's request for peremptory instruction.....	215	175
Plaintiffs' motion for an instructed verdict.....	217	175
Defendant's motion to strike Plaintiffs' Exhibit No. 8...	220	177
Plaintiffs' motion for an instructed verdict.....	226	180
Defendant's request for a peremptory instruction at close of testimony	229	182
Defendant's motion to submit the case to the jury on special issues (omitted in printing)	231	
Defendant's motion to have the court instruct the jury to find that less than 6 per cent is not a fair and reasonable rate of return (omitted in printing)	233	
Plaintiffs' objections and exceptions to paragraph three of court's charge defining "Used and Useful"	235	182
Defendant's exceptions and objections to the court's main charge	238	184
Defendant's requested issues, Nos. 1 to 118, inc. (omitted in printing)	275	
Charge of the court.....	515	192
Verdict of the jury.....	519	195
Plaintiffs' motion for a new trial (omitted in printing) ..	520	
Defendant's motion for judgment (omitted in printing) ..	522	
Plaintiffs' motion for judgment non obstante verdicto ..	523	195
Judgment	526	197
Order overruling plaintiffs' motion for judgment non obstante verdicto	533	199
Plaintiffs' first amended motion for new trial.....	535	200
Answer of defendant to plaintiffs' first amended motion for new trial (omitted in printing)	555	
Order overruling plaintiffs' first amended original motion for new trial.....	560	207
Stipulation that exhibits introduced during trial may be carried up as a part of the record without the necessity of re-writing same in statement of facts.....	562	208
Plaintiffs' Bill of Exceptions No. 1 (omitted in printing)	564	
Plaintiffs' Bill of Exceptions No. 2 (omitted in printing)	568	

INDEX

iii

	Original	Print
Record from District Court of Travis County—Continued.		
Plaintiffs' Bill of Exceptions No. 3 (omitted in printing)	571	
Plaintiffs' Bill of Exceptions No. 4 (omitted in printing)	574	
Plaintiffs' Bill of Exceptions No. 5 (omitted in printing)	577	
Plaintiffs' Bill of Exceptions No. 6 (omitted in printing)	580	
Order allowing all documentary evidence and exhibits to be sent up as a part of record, without necessity of filing copies with clerk or copying same within statement of facts proper.....	583	208
Defendant's cross assignments of error.....	585	209
Notice to attorneys of filing of statement of facts and transcript in the court below and Court of Civil Appeals (omitted in printing).....	597	
Bill of costs..... (omitted in printing) ..	599	
Clerk's certificate..... (omitted in printing) ..	600	
Statement of facts of hearing on plea in abatement and pleas to jurisdiction	a	215
Caption	a	
Testimony of E. F. Schmidt.....	3	215
Karl F. Griffith	51	234
Olin Culberson	82	250
S. W. Freese.....	98	260
Agreement as to capital stock of Lone Star Gas Co. (omitted in printing).....	122	
Testimony of E. F. Schmidt (recalled) (omitted in printing)	123	
State's Exhibits:		
1—Order U. S. D. C., November 11, 1933 (omitted in printing)	125	
2—Interlocking directorate, Lone Star System (omitted in printing).....	132	
3—Data from report on relations of companies.....	134	275
4—Form GU-2, gross receipts tax statement....	138	277
5—Compilation of total gas delivered in Texas..	139	297
6—Statement of gas sold Gainesville-Waxahachie	140	297
Defendant's Exhibits:		
1—Bill of complaint, U. S. D. C., No. 467—In Equity (omitted in printing).....	141	
2—Temporary restraining order, U. S. D. C., No. 467 (omitted in printing).....	142	
3—Stay order, 53rd D. C., October 15, 1933 (omitted in printing).....	146	
4—Compilation of data, operation of Lone Star Gas Co.....	148	298
Map attached to Exhibit 4.....	153-a	300
5—Contract between Lone Star Gas Company and Gainesville Gas Company, dated July 1, 1927 (omitted in printing).....	154	

Record from District Court of Travis County—Continued.

Statement of facts of hearing on plea in abatement and
pleas to jurisdiction—Continued.

	Original	Print
Reporter's certificate (omitted in printing) ..	161	
Agreement to statement of facts (omitted in printing)	162	
Judges's certificate (omitted in printing) ..	163	
Statement of facts of trial on the merits.....	1	301
Caption	1	301
Testimony of C. F. Petet.....	2	301
Objections to introduction of order of Railroad Commission	4	302
Defendant's request for peremptory instruction....	23	310
Stipulation re order of Federal Court granting temporary restraining order	25	311
Testimony of D. A. Hulcy.....	28	312
E. A. Steinberger.....	322	475
Frank E. Kendrick	401	506
J. H. Dunn	423	512
D. A. Hulcy (recalled).....	505	555
E. A. Steinberger (recalled)	525	567
D. A. Hulcy (recalled).....	542	575
P. McDonald Biddison.....	598	609
Reporter's certificate (omitted in printing) ..	732-a	
Testimony of Hal C. Dyer.....	804	674
P. McDonald Biddison (recalled)....	843	684
Paul Richey	1122	841
E. A. Steinberger (recalled).....	1161	854
Ed C. Connor	1167	858
Paul Richey (recalled).....	1198	874
Ed C. Connor (recalled).....	1259	908
Reporter's certificate (omitted in printing) ..	1507-A	
Testimony of P. McDonald Biddison (recalled)....	1677	1141
E. A. Steinberger (recalled).....	1835	1226
Ed C. Connor (recalled).....	1897	1256
Reporter's certificate (omitted in printing) ..	2284-A	
Testimony of E. F. Schmidt.....	2289	1459
D. A. Hulcy (recalled).....	2410	1529
E. F. Schmidt (recalled).....	2479	1567
D. A. Hulcy (recalled).....	2522	1592
Motion for instructed verdict (omitted in printing)	2543	
Testimony of Olin Culberson.....	2545	1604
E. W. Robinson.....	2560	1610
J. A. Phillips	2586	1625
Arthur A. Dobson	2766	1710
S. W. Freese	2801	1728
Reporter's certificate (omitted in printing) ..	2950-A	
Testimony of J. A. Phillips (recalled) (omitted in printing)	2951	
Testimony of R. H. Montgomery.....	2969	1807
S. W. Freese (recalled).....	3008	1827

Record from District Court of Travis County—Continued.

Statement of facts of trial on the merits—Continued.

Testimony of—Continued.

	Original	Print
F. S. French	3039	1843
S. W. Freese (recalled)	3055	1851
J. A. Phillips (recalled)	3098	1876
S. W. Freese (recalled)	3107	1880
Olin Culbertson (recalled)	3174	1917
E. A. Steinberger (recalled)	3196	1921
R. L. Thornton	3266	1960
Fred F. Florence	3277	1965
R. L. Thornton (recalled)	3299	1977
A. P. Holloway	3300	1978
Ed. C. Connor (recalled)	3311	1984
P. McDonald Biddison (recalled)	3347	2002
Ed. C. Connor (recalled)	3403	2029
E. F. Schmidt (recalled)	3427	2043
D. A. Hulcy (recalled)	3447	2054
S. W. Freese (recalled)	3534	2096

Reporter's certificate, (omitted in printing) .. 3560

Plaintiffs' Exhibits:

No. 1—Order of Railroad Commission, dated September 13, 1933 (omitted in printing)	3562	
No. 2—Stay order in Cause No. 467, in Equity, Lone Star Gas Company vs. Railroad Commission of Texas et al., in the District Court of the United States for the Western District of Texas	3564	2109
No. 3—Stipulation, dated June 11, 1934, by counsel for all parties, that the higher forty-cent rate has been in force and effect at all times, and that the thirty-two-cent rate provided for in the order of the Railroad Commission, bearing date of September 13, 1933, has never been at any time put into force or effect by said defendant, Lone Star Gas Company	3572	2114
No. 4—Report on Special Investigation of Records of Lone Star Gas Company Texas Properties, dated March 31, 1934, by J. A. Phillips Company	3577	2115
No. 5—Report on Special Investigation of Records of Lone Star Gas Company, dated March 31, 1934, by J. A. Phillips Company	3593	2126
No. 6—Lone Star Gas Company, Texas Gathering, Transmission, Compressing and General Property; Reproduction Cost New Appraisal, dated June 15, 1934, by Hawley, Freese and Nichols	3620	2141
No. 7—Lone Star Gas Company, Texas Gathering, Transmission, Compressing and General Property, Annual Depreciation, dated June 15, 1934, by Hawley, Freese and Nichols	3664	2158

Record from District Court of Travis County—Continued.

Statement of facts of trial on the merits—Continued.

Plaintiffs' Exhibits—Continued.

	Original	Print
No. 8—Report on Effect of Degree Day Deficiencies on Revenue and Earnings for Years Ending December 31, 1933, and March 31, 1934, Covering Texas Operations Only for the Lone Star Gas Company, by Hawley, Freese and Nichols	3679	2163
No. 9—Chart Showing Directors and Their Official Positions in the Listed Companies.....	3698	2175
No. 10—Copy of Charter of Lone Star Gas Company, dated June, 1909.....	3699	2176
No. 11—Graph Showing Depreciation Analysis—Steel Pipe. Historic Replacements and Abandonments, by Years, of Lone Star Gas Company, and Curve Showing Calculated Replacements and Abandonments.....	3709	2182

Defendant's Exhibits:

No. 1—Bill of Complaint in Cause No. 467, in Equity, Lone Star Gas Company vs. Railroad Commission of Texas et al., in the District Court of the United States for the Western District of Texas.....	3710	2183
No. 2—Restraining and Stay Order in Cause No. 467, in Equity (omitted in printing).....	3838	
No. 3—Opinion and Order of Railroad Commission of Texas in the Matter of an Investigation of the City Gate Rate Charged by the Lone Star Gas Company, dated September 13, 1933, in Gas Utilities Docket No. 75 (copy) (omitted in printing).....	3842	
No. 4—Statement Showing Lone Star Gas Company's Revenues, Expenses, and Amount Available for Return Based on 32¢ Domestic Gate Rate—Actual Operating Expenses as Reflected by Company's Books—Depreciation and Depletion; Allowances as Calculated by Commission; Rate Base as Determined by Commission for Twelve Months Ended December 31st, 1932 and Twelve Months Ended June 30th, 1933, on Public Service Operations.....	3931	2209
No. 5—Statement Showing Lone Star Gas Company's Amount Available for Depreciation and Return on Rate Base for Twelve Months Ended December 31, 1931, on Public Service Operations	3934	2209
No. 6—Statement Showing Lone Star Gas Company's Amount Available for Depreciation and Return on Rate Base for Twelve Months Ended December 31st, 1932, on Public Service Operations	3939	2212

Record from District Court of Travis County—Continued.

Statement of facts of trial on the merits—Continued.

Defendant's Exhibits—Continued.

Original Print

No. 7—Statement Showing Lone Star Gas Company's Amount Available for Depreciation and Return on Rate Base for Twelve Months Ended June 30th, 1933, on Public Service Operations (omitted in printing)	3944	
No. 8—Statement Showing Lone Star Gas Company's Amount Available for Depreciation and Return on Rate Base for Twelve Months Ended December 31st, 1933, on Public Service Operations	3949	2215
No. 9—Statement Showing Lone Star Gas Company's Amount Available for Depreciation and Return on Rate Base for Twelve Months Ended March 31st, 1934, on Public Service Operations	3954	2218
No. 10—Statement Showing Lone Star Gas Company's Amount Available for Depreciation and Return on Rate Base for Twelve Months Ended April 30th, 1934, on Public Service Operations	3959	2221
No. 11—Statement Showing Lone Star Gas Company's Detail of Operating Expense for Twelve Months Ended: December 31st, 1931; December 31st, 1932; June 30th, 1933; December 31st, 1933, and March 31st, 1934.....	3964	2224
No. 12—Statement Showing Lone Star Gas Company's Detail of Operating Expense for Twelve Months Ended April 30th, 1934.....	3968	2229
No. 13—Accounting Schedules of Lone Star Gas Company, Based on Findings by Railroad Commission of Texas and Set Out in Their Opinion and Order, dated September 13, 1933, on Public Service Operations.....	3972	2232
No. 14—Statement Showing Lone Star Gas Company's Revenues, Expenses, and Amount Available for Return Calculations Based on Actual Operating Expenses as Reflected by Company's Books for Twelve Months Ended April 30th, 1934, on Public Service Operations.	4039	2304
No. 15—Agreement Between Lone Star Gas Company and Municipal Gas Company, dated September 30th, 1931.....	4043	2306
No. 16—Agreement Between Lone Star Gas Company and Municipal Gas Company, dated December 3rd, 1930.....	4048	2312
No. 17—Agreement Between Lone Star Gas Company and Municipal Gas Company, dated November 28th, 1927.....	4054	2317

Record from District Court of Travis County—Continued.

Statement of facts of trial on the merits—Continued.

Defendant's Exhibits—Continued.

	Original	Print
No. 18—Agreement Between Lone Star Gas Company and Gainesville Gas & Electric Company, dated July 1st, 1927.....	4059	2323
No. 19—Agreement Between Lone Star Gas Company and The Dallas Gas Company, dated May 15, 1925.....	4064	2328
No. 20—Agreement Supplementing Agreement dated August 14th, 1925, Between Lone Star Gas Company and The Dallas Gas Company..	4069	2334
No. 21—Renewal and Extension of Contract Between Lone Star Gas Company and The Dallas Gas Company, dated June 7, 1930.....	4071	2336
No. 22—Agreement Between Lone Star Gas Company and Community Natural Gas Company, dated May 15, 1931.....	4073	2337
No. 23—Agreement Between Lone Star Gas Company and Waxahachie Gas Company, dated October 6, 1933.....	4079	2342
No. 24—Agreement Between Lone Star Gas Company and County Gas Company, dated May 15, 1925.....	4085	2348
No. 25—Agreement Supplementing Agreement dated May 15, 1925, between Lone Star Gas Company and County Gas Company, dated September 21, 1926.....	4091	2354
No. 26—Renewal and Extension of Contract Between Lone Star Gas Company and County Gas Company; dated June 7, 1930.....	4094	2357
No. 27—Agreement between Lone Star Gas Company and Texas Cities Gas Company, dated September 15, 1933.....	4097	2357
No. 28—Appraisal—Cost of Reproduction New for Lone Star Gas Company, January 1, 1933, Public Service Plant, Property and Business; Exclusive of Fort Worth Division.....	4103	2363
No. 29—Map of Lone Star Gas Company's Pipe Line System	8609	3006
No. 30—Report and Findings of Gas Reserves for Lone Star Gas Company, dated January 1, 1933, by J. H. Dunn, and F. E. Kendrick...	8611	3007
No. 31—Appraisal of Gas Reserves for Lone Star Gas Company, dated January 1st, 1933..	8858	3031
No. 32—Determination of Present Value of Undeveloped Leaseholds as of January 1, 1933, for Lone Star Gas Company by E. A. Steinberger	8866	3034
No. 33—Lone Star Gas Company's Pipe Prices—Large Lots for June 11, 1934; May 1, 1934; and January 2, 1934	8897	3035

Record from District Court of Travis County—Continued.

Statement of facts of trial on the merits—Continued.

Defendant's Exhibits—Continued.

	Original	Print
No. 34—Comparison of Pipe Prices for Lone Star Gas Company from January 1, 1933 to June 11, 1934, inclusive	8939	3035
No. 35—Lone Star Gas Company's Price Trend on Typical Valves and Fittings (omitted in printing)	8950	
No. 36—Appraisal—Lone Star Gas Company—Chart Showing Growth of Properties and Business under Basis of Reproduction. Development of Ratios of Plant in Service and Domestic Business used in Determination of Cost of Business Development (omitted in printing)	8972	
No. 37—Report on Condition of Property of Lone Star Gas Company, as of January 1, 1933, by P. McDonald Biddison	8975	3037
No. 38—Comparison of Public Liability and Workmen's Compensation Insurance Rate of Lone Star Gas Company, by E. A. Steinberger (omitted in printing)	9228	
No. 39—Comparison of Steel Pipe Prices and Dresser Couplings of Lone Star Gas Company, by E. A. Steinberger	9232	3042
No. 40—Appraisal, Cost of Reproduction New of Public Service Plant, Property and Business of Lone Star Gas Company as of May 1, 1934, Exclusive of Fort Worth Division, by E. A. Steinberger, P. McDonald Biddison and Ed. C. Connor	9240	3047
No. 41—Application of Annual Reserve Rates to Reproduction Cost New of the Public Service Property of Lone Star Gas Company, Exclusive of Fort Worth Division, as of January 1, 1933, by Ed. C. Connor	9252	3055
No. 42—Report Annual Reserve Accruals Required for Lone Star Gas Company, dated January 1, 1933, by Ed. C. Connor.....	9259	3057
No. 43—Current Quotations on Bonds and Other Senior Securities, Natural Gas, Manufactured Gas and Electric Utilities for Lone Star Gas Company, by Ed. C. Connor.....	9585	3196
No. 44—Gas Transportation by Lone Star Gas Company for the Years 1929, 1930, 1931, 1932, and 1933—also map of Lone Star Gas Company Pipe Line System.....	9591	3201
No. 45—Analysis of Transportation and Sale of Gas Produced in Central West Texas and Gas Produced in Shamrock Area and Southern Oklahoma, for Lone Star Gas Company—		

Record from District Court of Travis County—Continued.

Statement of facts of trial on the merits—Continued.

Defendant's Exhibits—Continued.

	Original	Print
Year 1933, by E. F. Schmidt and Ed. C. Connor	9600	3207
No. 46—Report on Property, Revenues and Expenses with Specified Areas—Year 1933.....	9723	3279
No. 47—Comparison of Estimated Costs in Plaintiffs' Exhibit 6 with Historical or Actual Costs	9773	3317
No. 48—Historical Rate of Business Development Major Transportation Lines—Lone Star Gas Company	9777	3318
No. 49—Comparison of Lone Star Gas Company's Historical Replacements, Removals and Abandonments, Main, Tap and Field Lines with Calculated Replacements, Removals and Abandonments—Plaintiffs' Exhibit 7.....	9785	3322
No. 50—Lone Star Gas Company's Receipt and Disposition of Gas—Transmission System "A" and "H" for the Year 1933.....	9793	3328
No. 51—Statement of Pipe Purchases Through Pittsburgh Office for Lone Star Group Companies—1931-1932	9796	3328
Reporter's certificate (omitted in printing)...	9799	
Proceedings in Court of Civil Appeals for Third Supreme Judicial District of Texas.....	1	3329
Caption (omitted in printing)...		
Defendants' cross-assignments of error—Extracts of brief..	9	3329
Opinion of court, Blair, J.....	16	3333
Judgment	69	3370
Appellee's motion for rehearing.....	70	3371
Opinion on appellee's motion for rehearing, Blair, J.....	139	3405
Order overruling motion for rehearing.....	141	3406
Entry on application docket of Supreme Court.....	142	3406
Application for writ of error to Supreme Court.....	143	3407
Order of Supreme Court refusing writ of error.....	221	3435
Entry on motion docket of Supreme Court showing filing of motion for rehearing of application for writ of error....	222	3435
Motion for rehearing of application for writ of error to Supreme Court	223	3436
Order of Supreme Court overruling motion for rehearing....	273	3456
Clerk's certificate, Supreme Court.....	274	3456
Order of Chief Justice of Court of Civil Appeals denying petition for appeal	275	3457
Petition for appeal, assignment of errors, and prayer for reversal with endorsement of Justice Cardozo thereon.....	277	3458
Order allowing appeal and fixing security for costs.....	294	3468
Citation and acknowledgment of service thereof (omitted in printing)	297	
Bond for costs..... (omitted in printing)...	301	

INDEX

xi

	Original	Print
Appellant's præcipe for transcript and acknowledgment of service thereof	309	3469
Order enlarging time for appellees' filing of counter præcipe.	325	3478
Appellees' counter præcipe for transcript and acknowledgment of service	326	3478
Stipulation as to the record on appeal.....	335	3485
Order allowing original record to be certified to the clerk of the Supreme Court of the United States (omitted in printing)	340	
Clerk's certificate	343	3487
Excerpts from appellants' brief in Court of Civil Appeals—		
Assignments of error.....	347	3489
Excerpts from appellee's brief in Court of Civil Appeals.....	361	3500
Excerpts from application for writ of error in Supreme Court	364	3501
Orders extending time for docketing of case, etc.....	374	3502
Statement of points to be relied upon and designation as to printing record	376	3503
Appellees' designation of additional parts of record to be printed	415	3529

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PAGE

[fols. 1-2]

IN 53RD DISTRICT COURT, TRAVIS COUNTY, TEXAS.

No. 53,033

THE STATE OF TEXAS

VS.

LONE STAR GAS COMPANY

PLAINTIFFS' SECOND AMENDED ORIGINAL PETITION—Filed
May 25, 1934

To Said Honorable Court:

Now comes the State of Texas, the Railroad Commission of Texas, an administrative agency of government, composed of Lon A. Smith, C. V. Terrell and Ernest O. Thompson, its duly elected and acting members, and James V. Allred, the duly elected and acting Attorney General of Texas, plaintiffs in this cause, who appear herein in their respective official capacities and act by and through the said James V. Allred, the duly elected and acting Attorney General of Texas, and with leave of the court first having been had and obtained, file this, their second amended original petition in lieu of their first amended original petition heretofore filed on the 5th day of May, A. D. 1934, and complain of Lone Star Gas Company, a corporation duly incorporated and chartered under the laws of the State of Texas, having its principal office and domicile in the City of Dallas, Dallas County, Texas, hereinafter called the defendant. For cause of action plaintiffs respectfully represent to the court:

[fol. 3]

I

Defendant, Lone Star Gas Company, owns and operates in this State a system of pipelines and appurtenant equipment and is engaged in the production, purchase, transportation and sale of natural gas in this State to distributing companies doing business in this State, which said distributing companies in turn sell said natural gas to domestic consumers in over two hundred (200) towns, cities and communities situated within the State of Texas.

II

The distributing companies above referred to are: Community Natural Gas Company, Municipal Gas Company, County Gas Company, The Dallas Gas Company, The Texas Cities Gas Company, and other unknown to plaintiffs, but well known to the defendant, and are affiliated to and work in conjunction with the defendant, Lone Star Gas Company, in supplying gas directly to domestic and residential consumers within the State of Texas. The affiliation referred to is brought about through a holding company, the Lone Star Gas Corporation, a Delaware Corporation, with its principal office and place of business located in the City of Pittsburgh, State of Pennsylvania, which said holding company owns a majority of the common stock and the controlling voting interest of the defendant, Lone Star Gas Company, and also in each of the distributing companies hereinabove referred to and mentioned.

Plaintiffs would show to the court that said Lone Star Corporation is the alter ego (meaning the other self and one and the same) of all the above named companies, and that said Lone Star Gas Corporation owns and controls [fol. 4] the same; that it is likewise the owner and operator of all companies affiliated with it in any State other than Texas, the exact names and numbers of which affiliated companies are unknown to plaintiffs but well known to the defendant.

That the Lone Star Gas Company and the affiliated distributing companies, Community Natural Gas Company, Municipal Gas Company, County Gas Company, The Dallas Gas Company, The Texas Cities Gas Company, and all of the other distributing companies hereinabove referred to are commonly owned by the holding company, Lone Star Gas Corporation, and are also commonly managed, directed and run under one system and general management. In the conduct of their business in supplying gas from its source directly to domestic and residential consumers, said defendant and said other companies are operating in exactly the same way and are conducting the business of supplying gas to domestic and residential consumers in precisely the same way as if said companies were one combined integrated company, operating as a single business enterprise. Plaintiffs would show to the court in this connection that the operation of said defendant and the conduct of business by

it within the State of Texas, together with that of its related and affiliated companies is wholly a local and intrastate business which is subject to regulation by the State of Texas and the Railroad Commission of Texas, pursuant to the authority that is duly vested by Title 102 of the 1925 Revised Civil Statutes of Texas, and all amendments.

III

The Railroad Commission of Texas has power and authority under the laws of this State, and particularly under [fol. 5] Title 102, of the 1925 Revised Civil Statutes of Texas, as amended, and it is its duty, by appropriate orders to regulate the rates and compensation to be charged by the defendant, Lone Star Gas Company, for the sale of natural gas to all affiliated and other distributing companies and at the city gates of the various cities and towns located within the State of Texas, where gas is by them and for it furnished to domestic and residential consumers, in intrastate commerce.

Under said Title 102 of the 1925 Revised Civil Statutes of Texas, as amended, the Railroad Commission, under the general powers given to it in Articles 6050 to 6066, inclusive, as amended, has original jurisdiction to regulate gas rates in all towns of this State not coming within the provisions of Article 1119 of the 1925 Revised Civil Statutes of Texas, as amended. Said Railroad Commission also exercises appellate jurisdiction in all cases coming to it under the terms and provisions of Section 6058, Title 102 of the 1925 Revised Civil Statutes.

IV

Plaintiffs would further show to the court that there are served by the defendant, Lone Star Gas Company, in intrastate commerce one hundred and seventy (170) towns, cities and communities, of which the Railroad Commission of Texas, under the laws of this State, has original jurisdiction to regulate gas rates. There are approximately seventy-five (75) cities and towns which have original jurisdiction to regulate such rates by the existing laws of this State, and over which the Railroad Commission exercises appellate jurisdiction only. The rate to be charged for gas in all such towns at the burner tips are dependent upon the rates being charged for gas at the city gate by the pipeline

[fol. 6] company defendant, Lone Star Gas Company, and no rate to be charged for the sale of gas in such cities, towns, and communities can be determined by the Railroad Commission, whether exercising its original or appellate jurisdiction, without a determination of the city gate rate and the fair price of gas to be charged by the defendant, where and when it is engaged in intrastate commerce within this State.

Plaintiffs show the court that in answer to the insistence, complaints and petitions of practically all of the cities, towns and communities served by the pipeline company, Lone Star Gas Company, the Railroad Commission did, on October 14, 1932, enter an order on its own motion, calling for a general investigation of the rates and charges for natural gas charged or collected by the defendant, Lone Star Gas Company, and that after due notice and a lengthy hearing, said Railroad Commission did, on September 13, 1933, out of its Gas Utilities Docket No. 75, issue its order and opinion fixing and prescribing the rates and compensation to be charged by the defendant for domestic and residential gas delivered to distributing companies of this State at the city gates of the cities, towns and communities served by said defendant, in intrastate commerce a copy of which said opinion and order is hereto attached and marked Exhibit "A".

V

That said order of the Commission marked Exhibit "A" and attached hereto prescribes a rate of not to exceed thirty-two cents per thousand cubic feet for domestic or residential gas at the city gates of the various cities, towns and communities within the State of Texas, to which the defendant sells such domestic or residential gas, in intra-[fol. 7] state commerce and the rate so prescribed and fixed by said order is just and reasonable, and such order, to which reference is here made, is a proper and lawful regulation of the business done by said defendant within the State of Texas, and the same is prima facie valid; that such order was duly passed after due notice and a prolonged hearing, extending over a period of eight months, and the same was duly passed, adopted and promulgated after such hearing in strict conformity with and pursuant to the provisions of Title 102, together with all amendments, of the 1925 Revised Civil Statutes of Texas. -

It is shown the court that for a great many years past and at this time, the prevailing rate charged and collected by said defendant for domestic or residential gas at the city gate has been and is now forty cents per thousand cubic feet, and that said rate now so charged is greatly in excess of the rate prescribed in the Railroad Commission's aforesaid order, and is, therefore, in violation of said order of the Railroad Commission. It is further shown that the defendant has been violating said order and refusing to abide by the same, or in any way comply with any of its terms and provisions since the same was entered by the Railroad Commission, and is continuing to violate the same at this time, in that the same rates are still being charged by said defendant, to-wit, forty cents per thousand cubic feet for domestic and residential gas, and unless enjoined and restrained, plaintiffs allege that said defendant will continue to violate the terms and provisions of such order, and that said defendant will continue to fail and refuse, to in any way comply with the terms of said order of the Railroad Commission of Texas, as hereinabove stated. Notwithstanding the passage of the said order, as alleged, lowering the rate from forty cents to thirty-two cents per [fol. 8] thousand cubic feet for domestic and residential gas, said defendant now and has at all times since the passage of said order, been charging forty cents per thousand cubic feet, such action on its part being in direct violation of said order.

VI

In this connection plaintiffs show the court that said Title 102 and the laws of this State prescribe an orderly and valid procedure for the fixation and establishment of adequate and reasonable rates and charges for the distribution and sale of natural gas by gas utilities, such as the defendant; that Article 6059 of said Title 102 of the 1925 Revised Civil Statutes, gives any dissatisfied gas utility the right to appeal from an order of the Commission to any district court of competent jurisdiction in Travis County, and that such an action is given precedence over all other causes on said docket of a different nature, and is required to be tried in said court as other civil causes; moreover, said article provides that gas utilities shall have the right of appeal to the appellate courts of this State, and such causes are given precedence in the appellate courts over all others of a dif-

ferent nature; such utilities are further given the right to supersede all such orders pending a final determination of same in the courts of this state; and by the terms of Article 6062 of said Title 102 of the 1925 Revised Civil Statutes, it is specifically provided that the enforcement of any such order of the Commission may be stayed by such court upon the application of any affected gas utility pending a final determination of the appeal, and that any such utility shall not, during said time, be subject to the penalties prescribed by law for a failure to observe such order.

[fol. 9]

VII

It is further shown that notwithstanding defendant's remedies are adequate and complete in the courts of this state, and notwithstanding every constitutional and legal right to which it may be entitled is and will be fully safeguarded and protected in said court, the defendant, nevertheless, elected to and did, on the 22nd day of September, 1933, file its bill of complaint in the District Court of the United States for the Western District of Texas, Austin Division, in a cause entitled Lone Star Gas Company, plaintiff, v. the Railroad Commission of Texas, et al., defendants, No. 467, in Equity, and being a cause wherein your defendant is plaintiff and wherein each and all of your plaintiffs are defendants, except the State of Texas. Plaintiffs allege, however, in this connection that said suit is, in substance and effect, a suit against the State of Texas, as well as one against its officers and agents in their official capacities, and that in legal effect the parties to said action are identical, and the subject matter of said suit brought by the defendant against plaintiffs in the said Federal Court is the same as the subject matter in this cause.

VIII

It is further shown that in said action in said United States District Court, Lone Star Gas Company alleged, in substance and effect, that the aforesaid order entered by the Railroad Commission of Texas fixed and prescribed a rate confiscatory of its property used and useful in the public service, and alleged that said order is unconstitutional, and upon said allegation obtained a temporary [fol. 10] restraining order out of said court adjoining and restraining your plaintiffs, and each of them (except the

State of Texas), from compelling or attempting to compel said defendant to observe said order of said Commission.

It is further shown that said writ issued out of said United States District Court, as extended by the order of said court and directed to your plaintiffs, was returnable before three judges of the United States in the court room of said court at Austin, Texas, on the 12th day of October at 9:30 A. M., and that your plaintiffs were commanded to appear and show cause, if any, why an interlocutory injunction should not be issued, further restraining and enjoining the enforcement of the Commission's aforesaid order.

It is further shown in this connection that the defendant, Lone Star Gas Company, prayed the court in said cause for both an interlocutory and permanent injunction, restraining your plaintiffs from enforcing the terms and provisions of said order of the Railroad Commission. Upon hearing upon the application of the Lone Star Gas Company for such interlocutory injunction, as aforesaid, on the 11th day of November, A. D. 1933, an order was entered by a three-judge court, duly and properly assembled, staying all proceedings in the case styled Lone Star Gas Company v. Railroad Commission of Texas, et al., No. 467 in Equity, in the District Court of the United States for the Western District of Texas, Austin Division, and providing that no further proceeding would be had in such cause until the present suit now pending before this Honorable Court should be finally determined. A copy of the order staying proceedings in the Federal Court is attached hereto and marked Exhibit "B" and is hereby, by reference thereto, [fol. 11] incorporated into this pleading for all purposes.

IX

Plaintiffs allege that the defendant is attempting to evade the laws of this state and the order of the Railroad Commission of Texas in fixing and prescribing rates and charges for the sale and distribution of domestic and residential gas at the city gates of the various cities and towns served by the defendant in intra-state commerce, and that in charging a rate in excess of that prescribed by the Railroad Commission, plaintiffs herein, each of them, and the consumers of domestic and residential gas, of this state are suffering irreparable injury, and that there is no adequate remedy prescribed by the laws of this State which will

protect the public interest involved and the rights of plaintiffs herein.

In this connection plaintiffs allege that the State of Texas has no adequate remedy at law to protect itself against the wrongs and injuries complained of herein, nor have the consumers of gas in the various cities and towns served by defendant in intrastate commerce any adequate remedy to protect themselves against the wrongs and unlawful acts herein alleged and complained of, and that, unless the relief herein sought is granted by this Honorable Court, each and all of the plaintiffs and said consumers of domestic and residential gas within the State of Texas will continue to suffer irreparable injury; that said loss and injury, unless further prohibited, will be continuing and will amount to the difference between the rate fixed by said Railroad Commission and the higher rate that is now being charged and collected by said defendant, Lone Star Gas Company.

Plaintiffs further show it is a charter duty of the defendant [fol. 12] ant, as well as a duty imposed by said Title 102 and the laws of this State, to strictly observe and obey the lawful orders, rules and regulations of the Railroad Commission of Texas fixing and prescribing rates for the transportation and sale of natural gas; that the observance of said laws and of the orders of the Railroad Commission is made an absolute condition of their corporate existence; that the State of Texas and the public generally, and your plaintiffs in particular, have a vital right and interest in the due and proper observance by the defendant of the laws of this State and of the orders, rules and regulations of the Railroad Commission fixing and prescribing rates, and that such orders are essentially for the benefit of the public generally, and it is the duty of plaintiffs to compel the observance of the same; that such orders and the order involved in this case were intended to and do subserve the public interest, and that the duty of the defendant herein to observe said order is a public duty, and that unless said order passed by said Railroad Commission is observed and enforced, the interest of the public will not in any way be protected and said defendant will not be regulated or subjected to regulation as the laws of the State of Texas provide.

Plaintiffs desire to have the constitutional questions involved in the attack being made by the defendant, Lone

Star Gas Company, upon the Commission's order heard and determined in the courts of this State, and to that end desire this court to enter an order staying proceedings in accordance with the provisions of Section 380, Title 28, U. S. C. A. (Sec. 266, Judicial Code of the United States) and to the end that all proceedings in the district courts of the United States will be stayed pending a final determination of this cause in the courts of this state; that under [fol. 13] said Title 28, U. S. C. A., and particularly Section 266, Judicial Code of the United States, the Federal Court has entered all necessary orders holding the suit there pending in abeyance and giving this court jurisdiction and priority to try this cause, all of which is well known to the defendant, and which is shown by the order staying proceedings in the Federal Court attached hereto, and marked "Exhibit B", to which reference for all purposes is hereby made.

X

This action is filed in this court in the nature of an appeal under the terms of Article 6059, Title 102, 1925 Revised Civil Statutes of Texas, but such appeal is not taken herein because the plaintiffs are dissatisfied with the rates prescribed in the Commission's said order, but primarily for the purpose of protecting and preserving the exclusive jurisdiction of this court and its venue to hear and finally determine the matters in controversy, and for the further purpose of enforcing said order, if it should be determined to be valid upon final hearing. In this connection plaintiffs would show that while they are plaintiffs of record, that they are only nominally so in form, and that said defendant is really the plaintiff, in that it is the one complaining of said order, and is seeking to set it aside.

XI

[Plaintiffs would further show to the court that during the pendency of this suit that said defendant has charged and will continue to charge and collect and to keep in force and effect the rate that is now in force and effect, to-wit, the forty cent rate instead of the thirty-two cent rate, as is provided for in said order of the Railroad Commission; that much time may lapse and intervene before this cause is finally adjudicated and determined; that if upon the final hearing, hereof or in a trial of this cause, it should

be adjudicated or determined that said order of the Railroad Commission was and is in all things valid, as it is presumptively considered to be, then in such event said defendant would owe to the domestic and residential consumers of Texas of the various cities, towns and communities affected, the difference between the lower rate of thirty-two cents per thousand cubic feet provided for in said order of the Railroad Commission, and the higher rate of forty cents per thousand cubic feet, that is now being charged and collected by it, together with interest at the rate of six per cent per annum from the date of each and every collection made whereby a higher rate was charged and collected than is provided for in said order of the Railroad Commission; that in order for complete justice and equity to be done the plaintiffs in this cause, in the event upon the hearing hereof that said order of the Railroad Commission is adjudicated to be valid, plaintiffs should have and recover of and from said defendant the difference between the two rates, as above stated, and the excess amounts collected by said defendant, together with interest at the rate of six per cent per annum on all amounts so collected by it, for the use and benefit of the domestic and residential consumers of gas in the cities, towns and communities within the State of Texas now being served by said defendant, in intra-state commerce, either directly or indirectly.

In this connection plaintiffs would further show unto the court that the only reason that said order of the Railroad Commission of Texas is not now being operated and in [fol. 15] force and effect is because said defendant has enjoined the carrying out of the same, as hereinabove alleged; that under Title 102 of the Revised Civil Statutes of Texas, together with all amendments, and under the general principles and usages of equity, said defendant will be entitled to make full reparation, and a refund to the domestic and residential consumers of the gas furnished by it, in the event that said order of the Railroad Commission is finally upheld; that unless appropriate relief is granted by this Honorable Court and said defendant is compelled by a proper judgment to restore that which it has prevented from becoming effective, that complete and adequate justice cannot be done, and that the said consumers will not recover that to which they are, under the law, entitled, and in this connection and to this extent this cause is brought by the plaintiffs *parens patriae* for the reparation, refund and restoration to said

domestic and residential consumers and citizens that are affected by said order:]

Wherefore, premises considered, plaintiffs pray that the defendant be cited in terms of law to appear and answer herein and that upon final trial hereof plaintiffs have judgment against the defendant, and that defendant be permanently and perpetually enjoined and restrained from charging or collecting any rates or charges for domestic and residential gas at the city gates of the various cities and towns served by it in intrastate commerce in this state, except those particular rates and charges duly authorized and prescribed by the order of the Railroad Commission of Texas, and that defendant be restrained from charging any rate in excess of that so prescribed by the Commission in its said order.

[fol. 16] Plaintiffs further pray, however, that pending a final determination of this cause in the courts of this State that this Honorable Court enter a proper order staying all proceedings by the Railroad Commission of Texas or any of its members, officers, employees or agents, or by any other person or official of this state under the order promulgated by the Commission fixing and prescribing the rates to be charged by defendant for gas delivered at the city gates of the various cities and towns served by it in this state.

Plaintiffs further pray that this Honorable Court enter an order staying all proceedings under the laws of this state and under the rules and regulations of the Railroad Commission, either for mandamus, mandatory injunction, injunction, damages, penalties, quo warranto or forfeiture of charter, pending the determination of this cause by this Honorable Court.

[Plaintiffs further pray that they recover for the use and benefit of the domestic and residential consumers of gas in Texas, where the service to them by defendant or its affiliated corporations is intrastate commerce or a local business, all amounts charged or collected by said defendant in excess of the thirty-two cent rate per thousand cubic feet fixed and provided for in said order of the Railroad Commission of Texas since September 13, 1933, the effective date of said order, or in the alternative, since September 22, 1933, the date defendant filed suit in the Federal court and obtained its injunction, as aforesaid, together with inter-

est at the rate of six per cent per annum on all such excessive sums so collected by said defendant from the date of collection thereof, or by any agents or persons acting for it in its behalf.]

[fol. 17] Plaintiffs further pray for such other and further relief, special and general, in law and in equity, to which they may show themselves justly entitled.

James V. Allred, Attorney General of Texas; Elbert Hooper, First Assistant Attorney General; W. C. Fitzhugh, Assistant Attorney General; A. R. Stout, Assistant Attorney General, Attorneys for Plaintiffs.

[fol. 18] *Duly sworn to by F. L. Kuykendall. Jurat omitted in printing.*

[fol. 19] EXHIBIT "A" TO PETITION
RAILROAD COMMISSION OF TEXAS
Gas Utilities Docket No. 75

Opinion and Order in the Matter of an Investigation of the
City Gate Rate Charged by the Lone Star Gas Company

[fol. 19a] INDEX

	Page
Statement of Case	14
Opinion of The Commission	16
Weight of Evidence	16
Summary of Findings	18
Revenues—1931	21
Operating Expenses—1931	21
Amount Available for Depreciation, Depletion, Return and Federal Income Tax—1931	30
Reproduction Cost New—December 31, 1931	31
Gas Wells	31
Other Production System Structures	32
Drill Tools and Equipment	33
Gathering System Rights of Way	33
Field Measuring Station Structures	34
Field Measuring Station Equipment	34
Field Line Equipment	34
Transmission System Measuring Station Land Including Improvements	35

INDEX—Continued

	Page
Transmission System Rights of Way	35
Transmission System Measuring Station Equipment	36
Transmission Line Equipment	37
Compressing Stations	44
General Office Building Land	45
General Office Structure	45
Automotive and Construction Equipment	45
Petrolia Field	46
Administration and Legal Expense, Engi- neering, and Supervision During Con- struction	47
Taxes During Construction	48
Interest During Construction	48
Preliminary and Organization Expense	51
Working Capital	52
Going Value	52
Reproduction Cost New Summary	66
Leaseholds	67
Present Worth	75
Annual Depreciation	76
Gas Wells	81
Other Production System Structures	83
Gathering System Rights of Way	83
Field Measuring Station Structures	83
Field Measuring Station Equipment	84
Field Line Equipment	84
Transmission System Measuring Station Land	86
Other Transmission System Leaseholds	86
Transmission System Rights of Way	86
Transmission System Measuring Station Structures	86
Other Transmission System Structures	87
Transmission System Measuring Station Equipment	87
Transmission Line Equipment	87
Compressing Stations	94
General Office Structure	96
Other General Structures	96
General Office Furniture and Fixtures and Other General Furniture and Fixtures	96

INDEX—Continued

	Page
General Shop Equipment.....	97
[fol. 19b] General Telephone System.....	97
Non-Physical Property.....	97
Annual Depreciation Summary.....	97
Application of Annual Depreciation Rates.....	98
Depletion—1931.....	99
Amount Available for Return and Federal In- come Tax—1931.....	99
Rate Base—December 31, 1931.....	99
Rate of Return.....	101
Excess Earnings Over a 6% Return—1931.....	103
Federal Income Tax Based Upon Minimum 6% Return.....	104
Reduction in Domestic Gas Rate to Give 6% Re- turn for 1931.....	105
Return on Transmission and Production Proper- ties for Years 1927 to 1932 Based Upon 8 Cent Reduction in Domestic Gas Rate.....	106
Return on Transmission Properties Based Upon 8 Cent Reduction in Domestic Gas Rate and Allowance of Market Value of Gas at the Well Head.....	113
Corrections to Returns Above 6%.....	114
Order.....	116

[fol. 19-1] Statement of the Case

On October 14, 1932, the Railroad Commission of Texas entered an order on its own motion calling for a general investigation of rates and charges made by the Lone Star Gas Company for natural gas delivered at the city gate of towns and cities served by that Company. Several circumstances made necessary this order. Under Article 1119 of the Revised Civil Statutes of 1925, as amended in 1931 by the Acts of the Forty-second Legislature, page 380, Chapter 226, the governing body of any city or town in the State of Texas of over 500 population, incorporated under the general laws of the State, has the power to regulate by ordinance the rates and compensation to be charged by a gas company distributing gas in such city or town. Under Article 6058 of the Revised Civil Statutes of 1925, an appeal may be taken by a dissatisfied utility from any ordinance

lowering the rate, or from the failure or refusal of a city governing body to grant a raise in rates. There were pending on the Gas Utilities Docket of the Railroad Commission a number of such appealed cases involving the rate to be charged for gas by the Lone Star Gas Company at the city gate of some 125 cities, towns and communities of the State of Texas. In addition to these cases where the rate to be charged for gas at the city gate was an essential fact necessary to the determination of the fair and reasonable prices to be charged for gas by distributing companies serving the cities and towns involved, there was a general desire on the part of the remaining cities and towns served by the Lone Star Gas Company for an investigation of the city gate rate.

A copy of the order of October 14, 1932, and notice of a hearing to be held beginning November 1, 1932, in the city of Fort Worth, was sent to the Lone Star Gas Company and to each of the cities and towns served by it. Accordingly on November 1, 1932, the Company appeared.

The Company is a gas utility as defined by Article 6050 of the Revised Civil Statutes of 1925. The Commission exercised its jurisdiction and called this case upon its own [fol. 19-2] motion acting under the provisions of Article 6053 of the Revised Civil Statutes of 1925.

The Lone Star Gas Company, a Texas corporation, is engaged in the production, transportation and sale at wholesale of natural gas. It operates an integrated pipe line system of approximately 4,000 miles, and engages in both interstate and intrastate commerce in the selling of gas to some 300 cities and towns in the states of Oklahoma and Texas.

The Company's Texas properties and its Oklahoma properties constitute parts of an integrated operating system. For that reason, we have considered the Oklahoma properties and operations and the effect thereof on the revenues and the expenditures within Texas. On this basis we have fixed a rate for application within the jurisdiction of Texas. There was omitted from consideration the property and operation of the non-public service operations of the Company as well as that represented by the division of the Lone Star Gas Company which operates as a distributing system supplying gas to the city of Fort Worth, Texas, and designated as the Fort Worth Division. It was not the purpose of this inquiry to regulate the rates to be charged by the

Company for industrial gas, but rather to inquire into the rates that would ultimately affect the domestic consumers.

The hearing started November 1, 1932, and progressed continuously with only minor interruptions until June 29, 1933, with but two exceptions: from November 17, 1932, to February 6, 1933, a recess was allowed for the purpose of examination of exhibits introduced by the Company by the State's witnesses, and from May 9 to 29, 1933, a recess was allowed the Company in order that they might examine exhibits presented by the State's witnesses. There were introduced during the hearing thirty-six exhibits, some of which consist of several thousand pages. The transcript of testimony is composed of 11,232 pages.

The only question to be determined is: What is a fair and reasonable rate per thousand cubic feet for domestic gas to be charged by the Lone Star Gas Company at the city gate? In order to arrive at this fair and reasonable rate we have made findings as follows:

- (a) Revenues.
- (b) Expenses.
- (c) Depreciation and Depletion.
- (d) Amount Available for Return.
- (e) Fair Rate of Return.
- (f) Rate Base to which Rate of Return is Applicable.
- (g) City Gate Rate which will earn a Fair Rate of Return on the Rate Base.

The year 1931 has been used as a basis for finding the City Gate Rate which would earn a fair return. This rate was then applied to the years 1927-1932 as a test of its reasonableness.

[fol. 19-3] Opinion of the Commission

Weight of Evidence

Ordinarily, in inquiries of this kind, irreconcilable conflicts in the testimony of expert witnesses, force consideration as to which witnesses probably have had the superior opportunity to know the truth; in this case, we happily, and, to a high degree, have been spared the need to resort to this somewhat speculative consideration, due to the obvious weight of all testimony produced both by the witnesses for the Company and the Witnesses Freeze and Phillips,

who appeared for the State. The historical facts relevant to this inquiry have been so fully set forth by various of the witnesses that it has been unnecessary for us to accept opinions, judgments, expert testimony as such, or "general experience" as the basis of our findings. The weight to be accorded the testimony of each witness can best be judged by the fullness or lack of factual bases for the statements made.

The Lone Star Gas Company used as its principal witnesses the following:

E. A. Steinberger
Ed. C. Connor
D. A. Huley
Harrison Smith

The State used as its principal witnesses the following:

S. W. Freese
J. A. Phillips

The witness Steinberger presented an evaluation of the physical property of the Company. Mr. Steinberger is a trained cost accountant regularly employed by the Company. He is well acquainted with the cost records of the Company. He was able to give a factual basis for all of the construction costs which he used and the record speaks for itself in this respect. In adopting his material prices, however, Mr. Steinberger departed from the Company records available to him, and used "quoted" prices substantially higher than what the Company was actually paying.

Mr. Connor is an engineer regularly employed by the Lone Star Gas Company. He submitted complete data based upon the Company's historical experience from which annual depreciation may be accurately determined. His deductions from these data are clearly set forth in the record. He also submitted an evaluation of overheads. In the case of overheads, however, he made little or no use of the historical experience of the Company, but worked up a purely hypothetical set-up which to a high degree inflated the actual costs.

Mr. D. A. Huley is a trained accountant and is an officer of the Company. He submitted accurate but not detailed [fol. 19-4] records of revenues and expenses for the years

1931 and 1932. He also submitted an evaluation of the Company's gas reserves based upon future earnings from the reserves. The record is clear as to his computations in arriving at his evaluation of gas reserves.

Mr. Smith, an engineer, is a member of a firm of engineers employed from time to time by the Lone Star Gas Company and by other natural gas companies. Mr. Smith submitted an evaluation of both physical property and overheads. He was unable to substantiate his construction costs by factual data and we cannot accept the accuracy of his costs. Such value as his testimony has would grow out of his "general experience" and not out of the material historical facts which are available in this case. As to overheads, Mr. Smith used a hypothetical set-up in much the same way as did the witness Connor.

Mr. Freese, of Hawley, Freese and Nichols, an engineer, retained by the State for this particular investigation, submitted an evaluation of both physical property and overheads and a determination of annual depreciation. Mr. Freese used a factual basis for the figures at which he arrived. He used material prices being paid by the Company rather than "quoted" prices. His computations and deductions are fully set forth in the record and speak for themselves.

Mr. Phillips, of J. A. Phillips and Company, an accountant, also was retained by the State for this particular investigation. He submitted accurate and detailed statements of revenues, expenses, and book costs for the years 1927-1932, inclusive, as taken from the records of the Lone Star Gas Company.

The qualifications of other witnesses will be discussed as required.

Summary of Findings

The findings in this opinion relate to the public service property of the Lone Star Gas Company; all figures cited relate to the public service property unless otherwise stated.

We find gross revenues for the year 1931 exclusive of charges to the Northern Natural Gas Company to have been \$9,301,862.65. The total expenses, including production expenses, for the year 1931 were \$4,174,807.47, leaving \$5,127,055.18 available for depreciation, depletion, and return on the Production and Transmission Properties. Depreciation

on a 6 per cent sinking fund basis was \$968,066.98 and depletion amounted to \$15,631.45, leaving \$4,143,356.75 for Return.

We find: a Reproduction Cost New as of December 31, 1931, for Transmission and Production Properties exclusive of Leaseholds of \$44,606,337.16; a Fair Value of Leaseholds as of December 31, 1931, of \$1,991,613.92; and a Rate Base of \$46,246,617.53 which is the undepreciated Reproduction Cost New of Transmission and Production Properties except for accrued depletion of Leaseholds and accrued depreciation of Automotive Equipment and Repair and Cleanout Tools.

We find a minimum fair rate of return for the year 1931 [fol. 19-5] to be 6 per cent, which amounts to \$2,774,797.05 when applied to the Rate Base as of December 31, 1931. The excess of net earnings of \$1,368,559.70 over the 6 per cent return, amounts to 8.039 cents per M cu. ft. on the 17,023,686.7 M cu. ft. of domestic gas sold during 1931.

On the basis of evaluating the gas produced by the Lone Star Gas Company during 1931 at the prevailing field price at the well head the reduction per M cu. ft. to give a 6 per cent return would have been 10.385 cents.

We have tested the effect of an 8-cent reduction in domestic gas rates by computing the returns which would have been available at the reduced rate during the six-year period 1927-1932. This period covered the three "prosperous" years 1927-1929 and the three "lean" years 1930-1932. An application of the reduced rate to the data of representative past years is the best and almost only guide as to the average results which may be expected in the future. The following table shows the returns which would have been experienced during the representative period 1927-1932 at the reduced rates.

Column I gives the returns for the years 1927-1932 which would have been available at the 8-cent reduced rate, based (1) upon an exclusion from revenues of the earnings from the Government Contract and of the charges to the Northern Natural Gas Company; (2) upon an inclusion in expenses of production expenses and an inclusion in the Rate Base of the production properties; and (3) upon a computation of return on an undepreciated Rate Base not only to the extent of the sinking fund interest rate of 6 per cent but also for the return in excess of 6 per cent. Under these

conditions the average rate of return would have been 8.46 per cent per annum.

Column II gives the returns for the years 1927-1932 which would have been available at the 8-cent reduced rate, based upon an inclusion in revenues of the earnings from the Government Contract and of the charges to the Northern Natural Gas Company, this being the only change from the conditions as under Column I. Under these conditions the average rate of return would have been 8.70 per cent per annum.

Column III is for the same conditions as under Column II except that instead of including the production expenses and including production property in the Rate Base, an allowance was made for gas at the well head at the prevailing field price. Under these conditions the average return would have been 9.66 per cent per annum.

Column IV is for the same conditions as under Column III except that the return above the sinking fund rate of interest of 6 per cent is computed on a depreciated rate base. Under these conditions the average rate of return would have been 10.96 per cent per annum. It is our judgment that the average future return for normal years will approximate this figure as a return on the transmission properties, while at the same time allowing the production properties the prevailing field price for gas at the well head.

[fol. 19-6]

	I.	II.	III.	IV.
	Excluding Earnings From Government and Northern Natural	Including Earnings From Government and Northern Natural	Including Earnings From Government and Northern Natural	Including Earnings From Government and Northern Natural
	Including Production Properties	Including Production Properties	Gas at Well Head At Prevailing Field Price	Gas at Well Head At Prevailing Field Price
Year	Undepreciated Rate Base	Undepreciated Rate Base	Undepreciated Rate Base	Return Above 6% Computed on Depreciated Rate Base
1927...	11.42%	11.66%	12.62%	15.15%
1928...	9.70%	9.94%	10.90%	12.74%
1929...	9.83%	10.07%	11.03%	12.65%
1930...	7.46%	7.70%	8.66%	9.45%
1931...	6.02%	6.26%	7.22%	7.63%
1932...	6.34%	6.58%	7.54%	8.14%
Average	8.46%	8.70%	9.66%	10.96%

During the years 1927 to 1932, inclusive, covered by the above tabulation, the Lone Star Gas Company paid for as current operating expenses a substantial portion of the overheads (Administration and Legal Expense, Engineering and Supervision During Construction; Taxes During Construction; Interest During Construction; and Preliminary and Organization Expense) herein evaluated by us as part of the Rate Base, and only paid for a small portion of these overheads as capital expenditures.

Revenues—1931

The total revenues of the Lone Star Gas Company public service operations for the year 1931 were \$9,301,862.65 (Ex. 26, p. 21). However this amount does not include charges to the Northern Natural Gas Company for overhead expenses incurred by the Lone Star Gas Company in connection with work performed for the Northern Natural Gas Company by the Lone Star Gas Company.

Operating Expenses—1931

The following 1931 expenses of the Lone Star Gas Company public service operations may be accepted without discussion by us at this time:

Gas Purchased.....	\$1,487,431.81 (Ex. 26, p. 21)
Producing and Gathering Expenses.....	201,029.49 (Ex. 26, p. 21)
Compressor Station Expenses.....	447,292.41 (Ex. 26, p. 21)
Transmission System Expenses.....	584,115.01 (Ex. 26, p. 21)
Taxes—Other than Federal Income Tax.....	399,008.95 (Ex. 26, p. 21)
Bad Debts and Other Adjustments of Gas Sales.....	7,727.33 (Ex. 26, p. 21)

[fol. 19-7]

Drilling Tool Expenses—Undistributed.....	\$ 7,469.05 (Ex. 26, p. 21)
Automobile and Truck Expenses—Undistributed.....	2,131.06 (Ex. 26, p. 21)
Miscellaneous Non-Operating Expenses.....	477.74 (Ex. 26, p. 21)

The following 1931 general expenses may also be accepted without comment:

Administrative Salaries.....	\$ 145,745.68 (Ex. 26, p. 32)
Other General Office Salaries.....	307,850.98 (Ex. 26, p. 32)
General Office Supplies and Expense.....	23,894.23 (Ex. 26, p. 32)

General Office Traveling and Incidental Expense.....	22,907.99 (Ex. 26, p. 32)
General Stationery and Printing....	16,011.29 (Ex. 26, p. 32)
Law Expense.....	53,426.94 (Ex. 26, p. 32)
General Office Rent.....	6,279.27 (Ex. 26, p. 32)
Maintenance of General Office Equipment.....	2,146.07 (Ex. 26, p. 32)
Telephone and Telegraph System Labor.....	12,077.19 (Ex. 26, p. 32)
Telephone and Telegraph System Supplies and Expense.....	6,044.29 (Ex. 26, p. 32)
Maintenance of Telephone and Telegraph System.....	10,109.98 (Ex. 26, p. 32)
Injuries and Damages.....	7.49 (Ex. 26, p. 32)
Insurance Expense.....	32,647.86 (Ex. 26, p. 32)
Welfare and Pensions.....	8,502.89 (Ex. 26, p. 32)
Miscellaneous General Administrative Expense.....	49,012.06 (Ex. 26, p. 32)
New Business Advertising Salaries..	9,548.77 (Ex. 26, p. 32)
New Business Soliciting and Commissions).....	27,969.98 (Ex. 26, p. 32)
New Business Supplies and Expense..	7,372.38 (Ex. 26, p. 32)

Maintenance of general structures amounted to \$24,650.71 during 1931 (Ex. 26, p. 32) and we are allowing this amount. This expenditure comprised the maintenance of the general office building. We are not convinced that the rentals paid by the general office building occupants, other than those engaged in the public service operations of the Lone Star Gas Company, were fair and equitable. Some of these occupants paid no rental (Ex. 26, pp. 9 and 10). This matter will be discussed further in connection with the valuation of the general office building.

Regulatory commission expense amounted to \$17,695.86 for the year 1931 (Ex. 26, p. 32) and we are allowing this [fol. 19-8] sum. Expenditures necessary for the preparation of inventories, for a reasonable number of evaluations, and for a presentation of all relevant facts to this Commission and to the Courts are properly chargeable to this account. Any expenditure for valuations, expert witnesses, or other items in defense of rates sought to be maintained by the Company, which expenditure is in excess of a reasonable amount should be borne by the owners of the Company. The 1931 regulatory expense was not relatively large. Whenever such expense is relatively large (such as for 1932) it should be amortized over a reasonable length of time, say ten years. The instant case is the first time since the incorporation of the Lone Star Gas Company in

1909 that the Company has had occasion to incur any regulatory expense by reason of a hearing before a Texas Regulatory Commission.

Charitable donations amounted to \$9,848.67 for the year 1931 (Ex. 26, p. 32). The larger donations are as follows (from Ex. 26, p. 36):

Dallas Community Chest	\$4,750.00
Fort Worth Community Chest	1,875.00
Baylor University	1,500.00
Boy Scouts of America	575.00
American Red Cross—Dallas	500.00

Further expenditures were made for "subscriptions and donations" as indicated in the succeeding paragraph.

The Company incurred miscellaneous general administrative expense in the amount of \$49,012.06 during 1931 (Ex. 26, p. 32). Of this amount \$20,215.94 (Ex. 26, p. 37) was for subscriptions and donations. The nature of these items is indicated by the larger subscriptions or donations as follows (from Ex. 26, p. 37):

American Gas Association	\$2,727.00
Greater Dallas Fund	2,625.00
Fort Worth Chamber of Commerce	1,550.00
Utopian Club	1,491.45
Mid Continent Oil and Gas Association	1,350.00
Texas Legislative Service	1,260.00
Texas Bureau of Economics	1,200.00

Any benefit received by the domestic gas consumers from most of these expenditures is quite remote. Donations should be the gifts of the stockholders and not of the consumers as part of the rates paid. At least the consumer should be allowed to use his own discretion in the matter. Donations are not proper future operating charges. For the time being we are computing the actual 1931 expenses including charitable donations (\$9,848.67) and the subscriptions and donations (\$20,215.94) included in miscellaneous general administrative expense. This fact should be given its due weight in any consideration of the 1931 rate of return. The total amount included for miscellaneous general expenditures is \$49,012.06.

[fol. 19-9] Advertising supplies and expense amounted to \$81,234.85 for the year 1931 (Ex. 26, p. 32). The purpose of

this advertising, according to Mr. D. A. Huley, Assistant to the President of the Lone Star Gas Company, was "to acquaint the public with conditions affecting the Lone Star Gas Company and keeping your name before the public generally" (Tr. p. 2014). To be a legitimate charge to the operating expenses of the public service operations of the Lone Star Gas Company, the purpose of advertising should be to increase the gas sales of the Company. The Lone Star Gas Company is a gas transmission company and its only customers are gas distributing companies and a few large industrial users served directly from the transmission lines of the Company. Any new business or increased sales secured through the medium of advertising would be from the customers of the distributing companies. The parties sought to be reached through the medium of advertising would be the customers or prospective customers of the distributing companies, if the purpose of the advertising be to increase sales. A part (\$13,974.94) of the expenditure set forth above was made by the distributing companies and charged to the Lone Star Gas Company which accepted the charges (Tr. p. 7856). We are of the opinion that any advertising expenses incurred to increase sales to the customers of the distributing companies or to secure new customers for the distributing companies is an expense which should be borne by the distributing companies. The only example of advertising done by the Lone Star Gas Company or by the affiliated distributing companies, and which was cited in the record, was headed "60 CENTS OF EVERY GAS BILL GOES FOR TAXES" (Tr. p. 2222). Advertising expense incurred for political purposes is not a legitimate charge against the public service operations of the Lone Star Gas Company. Although we are allowing the full amount set forth above for advertising supplies and expense, we do so reluctantly, (1) for the reason that any expenditure for advertising to increase sales should have been made by the distributing and not by the transmission company, and (2) for the reason that any expenditure for influencing policies of legislation is not a proper charge to operating expenses, the record failing to disclose what portion, if any, of the expenditure was of an allowable nature. In this connection it should be observed that the copy or content of all advertising paid for, peculiarly was within the knowledge of the Company. The propriety of these expenditures was questioned in the hearing and it was within the power of the Company to have

made a positive showing of clean hands; it failed to do so, and it might properly be assumed by us that all advertising of the Company was infected with the vice of political intent. Hereafter the Company should so keep its records of advertising as to be able to definitely show in any future investigation the nature and purpose of expenditures for advertising.

Management fees paid to the Lone Star Gas Corporation during the year 1931 amounted to \$91,375.38 (Ex. 26, p. 21). In answer to the question: "Now, what are the services that [fol. 19-10] the Lone Star Gas Corporation renders in return for this management fee?" Mr. Huley, the Assistant to the President of the Lone Star Gas Company, answered: "The Lone Star Gas Corporation furnishes a purchasing agent who purchases the larger material; I have particular and specific reference to pipe—that is all purchased by the Lone Star Gas Corporation, and they also furnish financial aid and assistance, which has been a sizeable amount, they furnish general executive assistance, and they also furnish legal talent, and they also furnish some engineering aid and assistance. I think, generally speaking, those are the main things which are furnished." (Tr. p. 2043.) This further testimony by Mr. D. A. Huley is typical of his testimony with reference to the services rendered by the officers of the Lone Star Gas Corporation:

Q. "Is there any particular piece of legal work since the first of 1931 that Mr. Mitchell has rendered direct assistance to the Lone Star Gas Company on?"

A. "No, sir. I think most of his time, so far as Lone Star Gas Company is concerned, has been in connection with the securing of money for them."

Q. "As a matter of fact, the most of the advice that is solicited from these gentlemen is on financial propositions, is it not?"

A. "Well, not altogether financing, no sir. Well, of course, the whole general situation, that is the Lone Star Gas Company, the outlook of any additional markets or anything of that kind or any additional business that Lone Star Gas Company would take on, those gentlemen advise about that."

Q. "But the great majority of the questions that are submitted to them are financial questions, are they not—ques-

tions in connection with the financing of the Company's business?"

A. "Well, of course, it would be pretty hard for me to say, Mr. Fitzhugh, that that was more than fifty per cent of it, but that is a very vital subject these days, and I do not recall a single conference or meeting when that has not been talked about at length." (Tr. p. 2049.)

The Corporation does not have a legal and engineering staff regularly employed for detail work. The organization consists largely of the officers of the Corporation. The testimony discloses only one specific service rendered by the Lone Star Gas Corporation other than general financial aid and assistance; this being the purchasing of pipe by Mr. J. M. Simpson, of Pittsburgh, Pa., Vice-President of the Lone Star Gas Corporation, whose duties include "general supervision for all purchases of Columbia Gas and Electric" Company (Tr. p. 2050). The detail clerical work in connection with pipe purchases is done by the Purchasing Department of the Lone Star Gas Company. The Lone Star Gas Company is billed directly by the pipe manufacturer for any pipe purchased. If Mr. Simpson receives any better quotations than the Lone Star Gas Company could get directly, the record fails to disclose that fact. The Lone Star Gas Corporation owns substantially all of the common stock of [fol. 19-11] the Lone Star Gas Company. As of December 31, 1931, the Lone Star Gas Corporation had loaned the Lone Star Gas Company approximately \$19,000,000 at an interest rate of 6 per cent (Tr. pp. 54 and 60). We see no reason to believe that the general financial aid and assistance furnished by the Lone Star Gas Corporation consisted of anything other than a most natural manifestation of the owner's interest in his investment and a solicitude which was certainly justified by the size of his investment and which would appear to have been recompensed by the receipt of dividends and interest from the Company. A number of the officers of the Lone Star Gas Corporation are also paid a salary by the Lone Star Gas Company. It is material to observe that the management fee is not computed on the basis of specific services rendered but on the basis of one per cent of the gross revenues from gross sales (Tr. p. 2042). The Company started paying this management fee in 1929 (\$95,062.03, Ex. 26, p. 21), prior to which time no management fee was paid. The Company has failed to show the nature

or value of any services rendered to it by the Lone Star Gas Corporation. We are of the opinion that any allowable charges for assistance in the purchases of pipe for replacements (i. e., not for capital expenditures) were negligible. We are disallowing management fees paid to the owners, viz., the Lone Star Gas Corporation, inasmuch as any such fees paid were simply a division of profits and should be considered as part of the earnings. A charge of this nature would simply disguise an operating profit and cause it to appear to be an operating expense.

In *Smith v. Illinois Bell Telephone Company* (282 U. S. 155), we note that 4½ per cent of gross revenues were paid under contract to the American Bell Telephone Company for "rental for the use of instruments and for engineering, financial and advisory services." In rendering the opinion of the United States Supreme Court, Mr. Chief Justice Hughes said:

"In view of the findings, both of the State Commissions and of the Court, we see no reason to doubt that valuable services were rendered by the American Company, but there should be specific findings by the statutory court with regard to the cost of these services to the American Company and the reasonable amount which should be allocated in this respect to the operating expenses of the intrastate business of the Illinois Company in the years covered by the decree."

In *Western Distributing Company v. Public Service Commission of Kansas* (285 U. S. 119), we note that the Cities Service Gas Company sold gas to Western Distributing Company, a distributing company, which gas was an interstate movement. The Commission disclaimed any right to regulate rates charged for interstate service but insisted on the right to determine whether the price being paid for gas at the city gate is a fair and reasonable one. In deciding that the Commission had the right contended for, the Court said:

[fol. 19-12] "Having in mind the affiliation of buyer and seller and the unity of control thus engendered, we think the position of the appellees is sound, and that the Court below was right in holding that if the appellant desired an increase of rates it was bound to offer satisfactory evidence with respect to all the cost which entered into the ascertainment of a reasonable rate. * * * There is an absence of arm's

length bargaining between the two corporate entities involved, and of all the elements which ordinarily go to fix market value. The opportunity exists for one member of the combination to charge the other an unreasonable rate for the gas furnished and thus to make such unfair charge in part the basis of the retail rate."

Dry Hole expense amounted to \$65,871.56 for the year 1931 (Ex. 26, p. 21). This item of expense varies widely from year to year; 1928—\$29,561.61, 1930—\$196,034.17 (Ex. 26, p. 21). The average dry hole expense for the five years ending December 31, 1931, was \$79,453.12 and we are allowing that amount for the year 1931. The total dry hole expense incurred by the Lone Star Gas Company in the development of some 441,454,335 M cu. ft. of gas was \$985,996.18 (Ex. 29, p. 39), or an average of \$.002233 per M cu. ft. of gas developed. The Lone Star Gas Company produced 5,304,828 M cu. ft. of gas during 1931 (Tr. pp. 8496 and 8497, Ex. 8, p. 77). At the average dry hole expense per M cu. ft. of \$.002233, the dry hole expense necessary to develop the 5,304,828 M cu. ft. of gas produced by the Company and chargeable to 1931 was \$11,845.68. On the assumption that the 1931 dry hole expense per M cu. ft. of gas developed was average, we have burdened the 1931 dry hole expense by some \$67,607.44 (\$79,453.12 minus \$11,845.68) more than the dry hole expense required to develop the gas actually produced during 1931. This excess dry hole expense (\$67,607.44) is in the nature of money advanced for the development of gas which will be produced in future years. However, by our treatment of this item as a current operating expense the Company should be precluded from capitalizing dry hole expense in any future rate investigation.

Cancelled and surrendered lease expense amounted to \$239,230.96 for the year 1931 (Ex. 26, p. 21). Cancelled and surrendered lease expense is incurred whenever the Company drills a dry hole on an undeveloped lease and decides that the whole lease is dry; whenever an undeveloped lease is proven dry by any other operations; whenever the Company deems the prospective gas not worth the delay rentals; or whenever for any reason the Company decides that the lease is not of sufficient value to continue paying delay rentals. When an undeveloped lease is cancelled and surrendered, it is charged off at its original cost plus all delay rentals and any acquisition costs that have been set up on the books of

the Company. The average cancelled and surrendered lease expense for the five year period ending December 31, 1931, was \$99,140.73, varying from \$12,480.59 for 1928 to \$239,- [fol. 19-13] 230.96 for 1931 (Ex. 26, p. 21). As in the case of dry hole expense we are allowing cancelled and surrendered lease expense in the amount of the average of this expense for the five year period ending December 31, 1931. The total cancelled and surrendered lease expense incurred by the Lone Star Gas Company in connection with the development of some 441,454,335 M cu. ft. of gas was \$2,231,879.84 (Ex. 29, p. 39) or an average of \$.005056 per M cu. ft. of gas developed. At this average (cancelled and surrendered lease expense per M cu. ft. of gas developed) the cancelled and surrendered lease expense necessary to develop the 5,304,828 M cu. ft. of gas produced by the Lone Star Gas Company in 1931, was \$26,821.21. Assuming that the 1931 cancelled and surrendered lease expense per M cu. ft. of gas developed was the same as the average cost in the past, the amount of cancelled and surrendered lease expense which we have allowed (\$99,140.73) is \$72,319.52 (\$99,140.73 minus \$26,821.21) more than the cancelled and surrendered lease expense necessary to develop the gas actually produced during 1931. As in the case of dry hole expense, this excess of cancelled and surrendered lease expense (\$72,319.52) was in the nature of an advance for the development of gas which will be produced in future years. This treatment of cancelled and surrendered lease expense as a current operating expense at this time should preclude the Company from capitalizing cancelled and surrendered lease expense at any future rate investigation.

Federal income tax cannot be computed until "income" be determined. Federal income tax will be hereinafter considered after the determination of "earnings before Federal income tax" has been made and after a determination of a fair rate of return.

In accordance with the consideration hereinabove set forth, we are allowing 1931 expenses of the Lone Star Gas Company public service operations as follows:

Gas Purchased	\$1,487,431.81
Producing and Gathering Expenses	201,029.49
Compressor Station Expenses	447,292.41
Transmission System Expenses	584,115.01
Taxes—Other than Federal Income Tax	399,008.95

Bad Debts and Other Adjustments of Gas Sales	7,727.33
Drilling Tool Expenses—Undistributed	7,469.05
Automobile and Truck Expenses—Undistributed	2,131.06
Miscellaneous Non-Operating Expenses	477.74
Administrative Salaries	145,745.68
Other General Office Salaries	307,850.98
General Office Salaries and Expense	23,894.23
General Office Traveling and Incidental Expense	22,907.99
General Stationery and Printing	16,011.29
Law Expense	53,426.94
[fol. 19-14] General Office Rent	6,279.27
Maintenance of General Office Equipment	2,146.07
Telephone and Telegraph System Labor	12,077.19
Telephone and Telegraph System Supplies and Expense	6,044.29
Maintenance of Telephone and Telegraph System	10,109.98
Injuries and Damages	7.49
Insurance Expense	32,647.86
Welfare and Pensions	8,502.89
Miscellaneous General Administrative Expense	49,012.06
New Business Advertising Salaries	9,548.77
New Business Soliciting and Commissions	27,969.98
New Business Supplies and Expense	7,372.38
Maintenance of General Structures	24,650.71
Regulatory Commission Expense	17,695.86
Charitable Donations	9,848.67
Advertising Supplies and Expense	81,234.85
Dry Hole Expense	79,453.12
Cancelled and Surrendered Lease Expense	99,140.73
Total	\$4,174,807.47

Amount Available for Depreciation, Depletion, Return and
Federal Income Tax—1931

Deducting the total operating expenses, \$4,174,807.47 from the total revenues, \$9,301,862.65, leaves \$5,127,055.18 as the amount available for depreciation, depletion, return and Federal income tax on the public service properties of the Lone Star Gas Company for the year 1931.

Reproduction Cost New—December 31, 1931

The following reproduction cost new figures as of December 31, 1931, for the several items listed are taken from the appraisal submitted by the Company witness Steinberger and are accepted without discussion:

Repair and Cleanout Tools and Equipment.....	\$42,411.44 (Ex. 6, p. 246)
Other Transmission System Land, Including Improvements.....	24,716.45 (Ex. 6, p. 873- Ex. 28, p. 50)
Other Transmission System Leaseholds including improvements.....	3,463.71 (Ex. 6, p. 883- Ex. 28, p. 51)
Transmission System Measuring Station Structures.....	172,676.20 (Ex. 6, p. 898)
Other Transmission System Structures [fol. 19-15].....	130,661.27 (Ex. 6, p. 1130)
Other General Land.....	\$51,797.38 (Ex. 6, p. 3888)
Other General Structures.....	59,716.19 (Ex. 6, p. 3891)
General Office Furniture and Fixtures.....	204,520.67 (Ex. 6, p. 3929)
Other General Furniture and Fixtures.....	10,967.71 (Ex. 6, p. 3935)
General Shop Equipment.....	103,756.02 (Ex. 6, p. 3936)
General Tools.....	164,020.99 (Ex. 6, p. 3947)
General Telephone System.....	373,591.15 (Ex. 6, p. 3971)

Gas Wells.—We find the reproduction cost new of gas well equipment, including well construction not included with developed leaseholds, to be \$2,044,318.76 exclusive of gas wells in the Petrolia District (\$2,001,427.53, Ex. 28, p. 4 and \$42,891.23, Ex. 36, p. 2). This is the amount determined by us after making certain corrections to the Company's Exhibit 6, these corrections being supported by the computations made by the witness Freese. The following uncontroverted corrections made by Mr. Freese are accepted forthwith: corrections in prices of casing and tubing; corrections in prices of valves; engineering on drilling; gas well equipment and construction on wells not used nor useful in public service operations as of December 31, 1931. Engineering on gas wells is allowed by us under the head of Engineering and should not again be reflected here. The salvage value of gas well equipment on wells not used and useful as of December 31, 1931, has been allowed by us under the head of Working Capital. The cost of gas well construction on wells which were bought by the Company as part of a developed leasehold purchase has been included by us under the head of Developed Leaseholds and such gas well con-

struction is, therefore, deducted from Mr. Steinberger's item "Gas Wells," as set forth in his Exhibit 6. Mr. Freese made one further correction to this account as set forth in Exhibit 6, viz., a deduction of the \$.25 per foot which Mr. Steinberger had included for omissions and contingencies on gas well construction. The appraised value of gas well construction as set forth in the Company's Exhibit 6 was based upon the actual costs incurred in 1929, 1930 and 1931, and included all contingencies which were actually incurred. On p. 3486 of the record Mr. Steinberger, who prepared the Company's Exhibit 6, states that his allowance for omissions and contingencies included the hauling of casing and other material and loss of material. On p. 3499, however, he admits that hauling was included at \$.0752 per foot and loss of casing pulled at \$.0451 per ft. We find no evidence which would indicate that the actual costs as incurred by the Company and which were adopted by Mr. Steinberger did not include all possible contingencies. We do find evidence which would indicate that instead of an addition for "omissions and contingencies," Mr. Steinberger should have made a deduction for "duplications and contingencies." In addition to the considerable deductions made by Mr. Freese, we find that Mr. Steinberger priced fittings at too high a price by reason of not taking all of the discounts available to and received by the Company, that he used prices on cast iron fittings instead of the cheaper malleable fittings which were actually in place, and that he did not reduce his costs from a 1929-1931 basis to a December 31, 1931, basis. We find that the \$.25 per foot included by Mr. Steinberger as an allowance for omissions and contingencies is a proper deduction.

Other Production System Structures.—Mr. Freese determined a reproduction cost new for other production system structures of \$11,080.36 (Ex. 28, p. 24). Mr. Freese arrived at this figure by deducting from the amount set forth in the Company's Exhibit 6 certain oil handling equipment on the Holloway Lease in the Petrolia District and by deducting certain water handling equipment on the Hatcher Lease in the Panhandle Field. We concur in the deduction of the oil handling equipment in the Petrolia District both by reason of the fact that this equipment is not used and useful in the public service operations of the Lone Star Gas Company and by reason of our handling of all of the Petrolia District

accounts as hereinafter set forth. As to the water handling equipment on the Hatcher Lease in the Panhandle Field, this equipment should be deducted if the cost of this equipment has been capitalized as part of the cost of drilling wells and included in the account "Gas Wells." The actual cost of drilling wells was used by Mr. Steinberger in Exhibit 6 and adopted by Mr. Freese in Exhibit 28. (This equipment on the Hatcher Lease is used to furnish water for well drilling operations). Although there may be some duplication in this respect, we do not know the extent of this duplication and are, therefore, adding back the deduction of \$3,233.34 (Ex. 28, p. 24) covering the Hatcher Lease water handling equipment. Restoring this sum gives a total for this account, Other Production System Structures, of \$14,313.70.

Drill Tools and Equipment.—This account covers tools and equipment used in the drilling of wells as distinguished from tools and equipment used in the repairing and cleaning out of wells. In appraising gas well construction both Freese and Steinberger used a contract drilling price whereby the contractor was to furnish his own drill tools and equipment. The contract price per foot compensates the contractor for the use of his drill tools, including depreciation and interest (or return) on the drill tools and equipment. The appraised value of gas well construction allowed by us includes a capitalization of interest (or return) and depreciation on all necessary drill tools and equipment. We therefore, are making no allowance for drill tools and equipment inasmuch as such tools and equipment owned by the Company would not be used and useful under the set-up adopted by Messrs. Freese and Steinberger; i. e., having an independent contractor do all drilling. If Messrs. Freese and Steinberger had used the actual cost of well drilling experienced by the Company in its own drilling and where it used its own tools, then some allowance should be made for drill tools and equipment. However, the actual cost of drilling a well would be less where the Company made use of its own tools, and the net result should be approximately [fol. 19-17] the same in so far as the total appraised values are concerned.

Gathering System Rights of Way.—We are adopting \$10,-062.53 (\$9,088.77, Ex. 28, p. 26; \$973.76, Ex. 36, p. 4) as the reproduction cost new of Gathering System Rights of Way.

This figure was found by deducting from the amount shown in the Company's Exhibit 6 the rights of way on lines which had either been abandoned or were not used and useful as of December 31, 1931.

Field Measuring Station Structures.—We are adopting a reproduction cost new value of Field Measuring Station Structures of \$37,308.57 (\$36,939.73, Ex. 28, p. 28; \$368.84, Ex. 36, p. 5). This figure was found by deducting from the account as set up in the Company's Exhibit 6 property which was not used and useful as of December 31, 1931.

Field Measuring Station Equipment.—For this account we are adopting as reproduction cost new the sum of \$142,558.62 (\$141,836.26, Ex. 28, p. 30; \$722.36, Ex. 36, p. 6) which was found by deducting from the Company's Exhibit 6 the field measuring station equipment which was not used and useful as of December 31, 1931. Mr. Steinberger priced orifice plates as forged steel plates. As a matter of fact, most of these plates were cast iron and less expensive. However, no deduction has been made on this account.

Field Line Equipment.—Mr. Freese arrived at a reproduction cost new of Field Line Equipment of \$988,342.74 (\$953,754.34, Ex. 28, p. 31; \$34,588.40, Ex. 36, p. 9) by making certain deductions from the Company's Exhibit 6 prepared by Mr. Steinberger. We approve without discussion the deductions of field line equipment not used and useful as of December 31, 1931; corrections in valve prices, corrections in excavation costs in lines sufficiently long to justify machine excavation, and deductions of oil and gasoline equipment. Other deductions made were: differences in pipe prices, and part of "omissions and contingencies." We will discuss the differences in pipe prices under "Transmission Line Equipment." Omissions and contingencies were reduced by Mr. Freese from the five per cent. used in Exhibit 6 to one per cent. The record indicates in the cases of both field measuring station equipment and field line equipment that Mr. Freese did not make, nor have we adopted, all of the deductions which might have been made. It is more reasonable to assume that a deduction should have been made for "duplications and contingencies" which would result in a saving below the estimated cost, rather than that an addition should be made for "omissions and contingencies." For example, Exhibit 6 reflects the prices

of higher type and more costly valves, fittings, and orifice flanges than were actually used in many cases and fails to reflect the full discounts available on valves and fittings, or the best prices available to and received by the Company on meters. We are deducting from the reproduction cost [fol. 19-18] new of Field Line Equipment as found by Mr. Freese—the field line equipment in the Petrolia District except P. T. 65 to the Ray Dawson—Thelma Roberts No. 2 Well and except P. T. 73 to the Ray Dawson—Lon Kelly No. 1 Well. The field line equipment in the Petrolia Field will be discussed under the head of Petrolia Field. This deduction amounts to \$141,332.02 (\$144,893.36, Ex. 28, p. 39—Plus P. T. 3, \$700.36, P. T. 29, \$418.43, P. T. 30, \$1,251.29, P. T. 35, \$105.22, P. T. 49, \$656.40, P. T. 51, \$541.94, P. T. 58, \$1,311.52, Ex. 36, p. 7—Minus P. T. 65, \$6,911.06 and P. T. 73, \$1,635.44, Ex. 6, p. 519). We are, therefore, allowing under this account, Field Line Equipment, a reproduction cost new of \$847,010.72.

Transmission System Measuring Station Land Including Improvements.—The typical city gate measuring station equipment and structure belongs three-fourths to the transmission company and one-fourth to the distributing company. Upon the theory, therefore, that three-fourths of the land upon which such a station rests is used and useful in the transmission of gas and one-fourth used and useful in the distribution of gas, we have adopted a correction of the company's figures as set forth in Exhibit 6 where the Company had not already made some such division of the land. We find the reproduction cost new of Transmission System Measuring Station Land including improvements to be \$78,944.10 (Ex. 28, p. 49).

Transmission System Rights of Way.—In appraising transmission system rights of way Mr. Steinberger added twenty per cent to the actual cost experienced by the Company in purchasing a considerable amount of rights of way during the period 1929-1931, inclusive (Tr. pp. 3912-3916). This additional twenty per cent was to cover condemnation costs. This twenty per cent was added to each of the items included in the account "rights of way," viz., cost of the right of way proper, cost of acquisition, clearing, and construction damages, the cost of the right of way proper being a minor part (30 per cent approximately) of the total cost. Condemnation of rights of way is in general resorted to

whenever the Company is unwilling to pay the price asked by the right of way owner. Condemnation is not necessary when the Company is willing to pay the price asked for the right of way. The testimony shows that no condemnation suits were necessary during the period 1929-1931 which Mr. Steinberger studied in arriving at his unit costs of rights of way. The principal purpose of condemnation suits is to reduce the total costs of rights of way below what would otherwise have to be paid. We do not find in this record any reason to believe that the unit costs of rights of way purchased during 1929-1931 would have been any higher if some condemnation had been resorted to. Inasmuch as a major portion of the total rights of way cost is for labor, the cost as of December 31, 1931, should have been less than during the period 1929-1931 when somewhat higher labor rates prevailed. The cost of acquisition of rights of way, which is a [fol. 19-19] substantial part of the total cost of rights of way, varies in proportion to the number of owners and inversely in proportion to the length per parcel obtained from the individual owner. The testimony shows the average length of right of way per parcel purchased during the period 1929-1931 to be 105 varas (Tr. p. 3977) as compared with an average for the whole system of 139 varas (Tr. p. 1182). This also would indicate that the actual costs incurred during 1929-1931 and which were adopted by Messrs. Steinberger and Freese were too high. We are of the opinion that the reproduction cost new as found by Messrs. Steinberger and Freese in the sum of \$1,007,433.38 (Ex. 28, p. 52) without the twenty per cent addition is entirely ample for Transmission System Rights of Way.

Transmission System Measuring Station Equipment.—Mr. Steinberger shows a reproduction cost new of Transmission System Measuring Station Equipment of \$473,113.40 on page 1208 of Exhibit 6. However, in arriving at this figure Mr. Steinberger did not apply all of the discounts available to and received by the Company, particularly on valves. He computed the total correction by reason of this fact to be \$100,000 for the whole system on valves alone (Tr. p. 6244). Mr. Freese computed the correction for applicable discounts on valves for this particular item of Transmission System Measuring Station Equipment to be \$16,491.77 (Ex. 28; p. 55). Inasmuch as the total of the valve corrections arrived at by Mr. Freese is less than the total arrived

at by Mr. Steinberger, a correction to this item in the amount of \$16,491.77 would not be unfavorable to the Company. This leaves \$456,621.63 and we find this amount to be the reproduction cost new of Transmission System Measuring Station Equipment.

Transmission Line Equipment.—Mr. Freese arrived at his reproduction cost new of Transmission Line Equipment by making certain deductions from the appraised costs as set forth in the Company's Exhibit 6 prepared by Mr. Steinberger. This uncontroverted testimony with reference to the deduction by Mr. Freese of corrections in the prices of valves on all systems, corrections in hauling costs on all systems, a correction in the cost of welds on the "A" System, a correction in the cost of painting on the "B" System, and a correction in the cost of wet excavation on the "C" System, is such that we are justified in accepting these deductions. The other deductions made by Mr. Freese from the Company's Exhibit 6 in arriving at his reproduction cost new of Transmission Line Equipment are: differences in pipe prices, differences in excavation and backfill costs, and differences in the allowances for omissions and contingencies. Mr. Steinberger, in preparing the Company's Exhibit 6, used the basic pipe quotations furnished by pipe manufacturers and jobbers as of December 31, 1931. These quotations were made for appraisal purposes and there was no element of competition in making the quotations. Each of the manufacturers quoted the identical prices for each of [fol. 19-20)] the seventy-five or so weights of pipe found in the Lone Star System. For example, the quotations as of December 31, 1931, per hundred feet of twelve inch 37.45 lb. lap weld plain end pipe were:

National Tube Company	\$105.81
Jones and Laughlin Steel Co.	105.81
Wheeling Steel Corporation	105.81

The December 31, 1931, quotations were in effect during the entire last half of 1931. Quotations obtained during July were identical for each weight of pipe with the quotation obtained during December. For example, the quoted prices as of July 14 and July 17 on the twelve inch 37.45 lb. pipe quoted above were:

Continental Supply Company	\$105.81
National Supply Company	105.81

The quotations were for any amount of pipe providing shipment could be made in carload lots. These quotations were available to all, whatever their needs might be, whether for appraisal purposes or for purchase, whether for an individual requiring one carload or a large company requiring trainloads of pipe. (Tr. p. 4602-4621; 8053-8057). Mr. Freese in making his appraisal of the Transmission Line Equipment applied to the basic quotations (as of July to December, 1931) the discounts actually obtained by the Lone Star Gas Company as indicated by the last 1931 purchases of carload lots of more of various weights of pipe. In other words, Mr. Freese used the actual price paid by the Company for its last 1931 purchases of the various weights bought during 1931. Where purchases of particular weights were not made during 1931, Mr. Freese applied the discount actually obtained on the last 1931 purchase of the nearest weight. The effect of Mr. Freese's computation was to use the actual cost of the pipe to the company based upon the last 1931 purchases. The Lone Star Gas Company bought large amounts of pipe in 1929, having purchased a total of several million feet of all sizes of pipe up to and including 20 inch during that year. Basic quotations on pipe were maintained at a constant figure by the manufacturers throughout the year 1929. The discounts from the 1929 basic quotations were substantially the same on the large amounts of pipe bought during 1929 as were obtained on the relatively small purchases made during 1931. A comparison of the discounts obtained in 1929 on large purchases with the discounts obtained during the last half of 1931 (and which were applied in the Freese appraisal) are as follows for the ruling weights found in the Lone Star System:

[fol. 19-21]

Size of pipe (Plain End Lap-Weld)	Weight Lbs.	1929 Discount Off Quotations	Last Half 1931 Discount off Quotations
4"	10.790	12.90%	12.78%
6"	18.974	12.53%	12.85%
8"	25.062	13.82%	11.27%
10"	31.445	13.90%	11.64%
12"	37.453	10.49%	5.49%
16"	47.215	14.59%	16.01% (4-24-31)

(Transcript pp. 8078 to 8081.) Mr. Freese used the same method of arriving at the discounts for threaded and coupled

pipe as he used for the larger quantities of plain end pipe, i. e., discounts off of the December 31, 1931, quotations were based on the last purchases of each weight made during 1931. The effect of this procedure was again to use the price actually paid by the Company in making its last purchases during the year 1931. In arriving at the discounts to be applied to the December 31, 1931, quotations on electric welded pipe, Mr. Freese based his discounts on a sizeable purchase of electric welded pipe bought in August, 1931. If the pipe actually purchased were seamless pipe, as one witness testified, then the discount off of the higher quoted seamless pipe price would have been even greater. The discount arrived at by Mr. Freese for electric welded pipe was 12.35 per cent. The quoted price for 20 inch 59.231 pound 30 ft. joint electric welded pipe as of December 31, 1931, was \$211.48 (A. O. Smith Corp.) per hundred feet as compared with the actual price of \$201.38 per hundred feet paid the A. O. Smith Corporation for some 517,000 ft. of this pipe in 1929 (Tr. p. 8058). The quoted price as of December 31, 1931, was therefore approximately five per cent greater than the actual cost during 1929 when pipe prices were relatively high. The 12.35 per cent discount adopted by Mr. Freese for electric welded pipe is reasonable in view of the fact that large size lap welded pipe dropped some 25 per cent as between 1929 and December 31, 1931 (Tr. p. 4670). The Company defended its use of quoted prices by citing instances where gas distributing companies had paid the quoted prices. The tonnage of relatively small pipe required by the distributing companies cited is not to be compared with the very large tonnage of transmission line pipe, field line pipe, well casing, etc., currently required by Lone Star Gas Company. On the other hand, Mr. Freese cited the actual purchase of 2,221,272 feet of large and small pipe by the Lone Star Gas Company at prices less than the quoted prices by the approximate amount of the discounts which he used (Tr. pp. 8064 to 8081). He further testified that other gas transmission companies had bought large quantities of pipe during 1931 at prices approximating or less than the prices which he had adopted in his appraisal. We are convinced that the Lone Star Gas Company could have bought any sizeable tonnage of pipe at prices no higher than, or less than the prices, adopted by Mr. Freese as prevailing on December 31, 1931.

Although the Company Witness Huley cited into the record [fol. 19-22] several instances where affiliated distributing companies had paid the quoted prices for some of their relatively small needs, he failed to cite an instance where the Lone Star Gas Company had bought pipe for a single pipe line at the quoted prices. The quoted prices for the five years, 1927-1931, were available to Mr. Huley as were the Company's books showing the actual prices paid for the several millions of feet of pipe bought during the years 1927-1931. As against the failure of the Company witnesses to show where the Company had ever paid quoted prices, the witness Freese for the State cited the purchase at very substantial discounts from the quoted price of several millions of feet of large and small pipe, including pipe for practically all of the transmission lines built since 1928. The fact that the December 31, 1931, quoted price, sought to be maintained by the Company for the pipe on the largest line ever built by the Company (2nd B; 517,000 ft of 20"), was greater than the price actually paid during the peak price period of 1929, is sufficient to convince this Commission that the Company witnesses Huley, Steinberger, and Smith have concertedly misrepresented the prices which the Company would have had to pay for pipe which is by far the largest item entering into the public service property of the Lone Star Gas Company. The witnesses' qualifications as experts cannot change the fact that pipe prices decreased substantially from 1929 to December 31, 1931. The books of the Company, the manufacturers' basic quotations, the trend of all prices during this period, and the general knowledge of this Commission attest to the fact that pipe prices decreased rather than increased during this period.

In making his appraisal Mr. Freese accepted all of the unit construction costs incorporated in the Company's Exhibit 6 prepared by Mr. Steinberger except excavation and backfill costs. The unit construction costs used by Mr. Steinberger in the Company's Exhibit 6 were based upon actual performance studies of substantial amounts of work done on the Lone Star Gas Company System. Mr. Freese testified that he was satisfied that the average performances on the particular jobs studied by Mr. Steinberger were fairly typical of the entire system with the exception of excavation and backfill performances. It is apparent to us that the performance obtained in laying a particular kind of pipe on one line might be typical for that particular kind of

pipe over the whole system, whereas the excavation performances on a particular line or group of lines might not be at all typical of the whole system due to differences in the character of the country wherein the particular lines studied were located. The testimony (Tr. pp. 5336-5341) indicates to us that the country wherein the lines studied by Mr. Steinberger were located was not typical of the whole system. We are convinced that, in his study of excavation costs, Mr. Steinberger was unable to segregate his performances so as to avoid material duplications. This fact is [fol. 19-23] clearly shown by the testimony of Mr. Steinberger during his extensive cross-examination with reference to excavation. Mr. Steinberger did not arrive at his \$1.21 per yard hand excavation cost upon the basis of the Lone Star Gas Company performances in open country but upon the basis of performances obtained by another company in the construction of short sections of relatively small size ditches in town streets and alleys. (Tr. pp. 5074-5078). The classification of excavation on the lines studied by Mr. Steinberger was made on the basis of actual measurement, which showed hand excavation on the average line studied to be 1.39 per cent (Tr. p. 8499). The lines studied by Mr. Steinberger were built from 1929 to 1931, inclusive. The classification of excavation on all lines built prior to 1929 was made on the basis of "barring" tests, which resulted in an average for hand excavation of 7.71 per cent (Tr. p. 8499). A good example of the results of applying Mr. Steinberger's unit excavation costs to lines classified on different bases is to be found in Lines B and 2nd B, which lie in the same right of way for most of their length. Line 2nd B constitutes almost one-half of Mr. Steinberger's study of excavation costs. The excavation classification found by actual measurement on this line was machine excavation, 90.10 per cent; hand earth excavation, .83 per cent; rock excavation, 9.07 per cent (Tr. p. 8500). An application of Mr. Steinberger's unit costs to these percentages results in a weighted cost of \$.78 per cubic yard on Line 2nd B. The excavation classification on Line B found by barring was machine excavation, 76.92 per cent; hand earth excavation, 11.97 per cent; rock excavation, 11.11 per cent (Tr. p. 8500). An application of Mr. Steinberger's unit costs to these percentages results in a weighted cost of \$1.03 per cubic yard on Line B, or some 32 per cent greater than on Line 2nd B. It is obvious that an application of costs found on lines

classified by actual measurement, to the excavation classification found on a different basis, would lead to erroneous results. Inasmuch as by far the major portion of all excavation was classified by the "barring" method with its large percentage for hand excavation (7.71%), the application of the costs found on lines classified by actual measurement and which showed a small percentage of hand excavation (1.39%), would lead to a material overstatement of estimated costs. Mr. Freese obviated this excavation classification difficulty to a large extent by using a combination machine-hand excavation unit cost on lines which were machine excavated except for portions of the line inaccessible to machines.

A comparison of the unit costs submitted in the testimony of the representatives of five independent general contractors with the costs adopted by Mr. Freese is shown by the following tabulation of costs per cu. yd.:

[fol. 19-24] Witness	Machine Excavation	Hand Ex- cavation	Rock Ex- cavation	Backfill		
Robinson.....	\$.29	\$.70	\$2.30	.15	Tr. p.	8234
Lee.....	.28	1.00	3.50	.10	Tr. p.	8308
Sherman.....	.30	.60	3.00	.09	Tr. p.	8287
Dobson.....	.21	.98½	3.00	.15	Tr. p.	8349
						8455
Minter.....	.25	.90	3.37	.12	Tr. pp.	9153
						9195
Average.....	.26½	.83¼	3.03½	.12¼		
Adopted by Freese....	.30	1.00	3.25	.10		

Four of these witnesses, Robinson, Lee, Sherman and Dobson, represent four of the largest and most responsible independent contractors in the Southwest and were equipped to do the excavation work involved in the Lone Star Gas Company System. After being fully advised of the character of the work and all of the contingencies involved these witnesses stated that the companies which they represented would be willing to undertake the work at the above prices submitted by them either as of December 31, 1931, or as of the date of their testimony, viz., May-June, 1933 (Robinson—Tr. p. 8700; Lee—Tr. p. 9035; Sherman—Tr. p. 8758; Dobson—Tr. pp. 8441 and 8446). The other witness, Minter, had had experience in handling the construction of large gas pipe line construction work for a construction company now out of business. The Lone Star Gas Company introduced three witnesses, Hill, Jones and Biddison, who testified with reference to excavation and backfill costs. These men (or the companies they represent) are shown to have been de-

pendent upon gas transmission companies for the bulk of their work. This fact would have lost some of its force if the witnesses had been able to submit any factual basis for their figures. The witnesses Hill and Biddison used hypothetical gang set-ups in arriving at their figures, but were unable to submit any specific factual bases for either the gangs or the performances. The witness Jones testified that he just "doubled" certain base costs which base costs he was unable to produce (Tr. pp. 10241 to 10263). The figures adopted by Mr. Freese are substantially higher than the figures submitted by the independent contractors except for his backfill unit costs. We are adopting Mr. Freese's unit costs for each item except backfill which we are raising to fourteen cents per cu. yd., so that the backfill unit cost adopted by us shows approximately the same margin in excess of the average cost submitted by the five independent contractors as is shown by Mr. Freese's unit costs for excavation. The adoption of fourteen cents per cubic yard raises Mr. Freese's total for Transmission Line Equipment in the amount of \$131,012.32 (3,275,308 cu. yds. at 4 cents per cu. yd.).

Mr. Steinberger, in preparing the Company's Exhibit 6, [fol. 19-25] made an allowance of four per cent on Dresser coupled lines and three per cent on welded and threaded and coupled lines for omissions and contingencies. Mr. Steinberger pointed out as possible omissions and contingencies, the "snaking" of pipe in the ditch, gas lost in testing lines, and the distribution of Dresser couplings. The testimony shows that on a test check of some two million feet of line, the appraised or inventoried length of the lines was only .04 per cent less than the footage of pipe bought (Tr. p. 8026). The omission of excess pipe due to "snaking" would, therefore, approximate a loss of .04 per cent. The only substantial amount of gas lost in testing on any of the lines studied by Mr. Steinberger was on Line 2nd B. This was the first attempt of the Lone Star Gas Company to install a large size solid welded line and resulted in a large expenditure for the repair of leaks. This cost of repairing leaks was included in Mr. Steinberger's performance study on Line 2nd B. Since line 2nd B constitutes approximately one-half of Mr. Steinberger's entire study of welding performances, it is very probable that the inclusion of the time spent in repairing the great number of leaks on this line results in a unit cost more than sufficient to take care of the

repairing of leaks on the average line and also offsets any loss of gas in making tests on the average line. Mr. Steinberger testified that he omitted from his unit cost the cost of distributing Dresser couplings on Dresser coupled lines. We believe that the store's expense allowed on Dresser couplings and the expense of the two trucks allowed on Dresser coupled pipe installation are sufficient to cover the cost of distributing Dresser couplings. Notwithstanding the fact that Mr. Steinberger's appraisal makes no allowance for the full discounts applicable to and received by the Company on fittings on main transmission lines (including measuring station equipment) and notwithstanding the fact that on a large number of combination Dresser coupled and welded lines Mr. Steinberger applied the higher cost of laying welded lines rather than the lower combination cost, no correction has been made to his figure on this account. We believe that any "omissions and contingencies" are fully offset by "duplications and contingencies." However, we are accepting Mr. Freese's allowance of two per cent on Dresser coupled lines and one per cent on welded and threaded and coupled lines. The adequacy of this allowance is apparent when it is realized that practically all of the cost of pipe line consists of pipe and pipe laying (including excavation and backfill) and that the omission of all of the valves for example would be an omission of only approximately one-half of one per cent on the average line. Since test checks, consisting of a comparison of the pipe purchased for a particular line with the actual measured footage of the line when installed, show no appreciable (.04 per cent) omissions in the footages of pipe, it is inconceivable that omissions could equal the total cost of all the valves. An appraisal made in the manner in which Mr. Steinberger made his appraisal should cover all contingencies in connection with costs of construction since he made studies of the actual costs incurred and performances [fol. 19-26] obtained by the Company and which included all contingencies in each instance.

We, therefore, adopt as the reproduction cost new of Transmission Line Equipment the sum of \$26,932,811.12 (\$26,860,329.75, Ex. 28, p. 56, minus \$58,530.95, Ex. 36, p. 2, plus backfill addition of \$131,012.32).

Compressing Stations.—We are accepting Mr. Steinberger's figure of \$4,971,581.71 (Ex. 6, p. 2744) as a basis

for arriving at the Reproduction Cost New of Compressing Stations and are adopting this figure except for a relatively small correction due to his failure to apply certain discounts available to the Company on equipment purchases. Mr. Steinberger computes the correction on valves for the whole system, including compressing stations, to be approximately \$100,000.00 (Tr. p. 6244). Mr. Freese arrives at a smaller total amount and we are using Mr. Freese's corrections which give us \$4,894,617.14 (Ex. 28, p. 76) as the Reproduction Cost New for Compressing Stations. Mr. Steinberger failed to apply all of the discounts available to and received by the Company on fittings; however, we have made no correction on this account.

General Office Building Land.—Both the witnesses Steinberger and Freese used the original cost as a basis for evaluating the General Office Building Land. We concur in the deduction by the witness Freese of the portion of the site sold the Dallas Gas Company, leaving a book cost of \$41,545.97 (Ex. 28, p. 102).

General Office Structure.—The reproduction cost new figure of \$333,535.29 of the General Office Structure determined by Mr. Freese on the basis of the cost estimated by the Company's witness Dyer, is entirely reasonable. A part of the building is used by others than those engaged in the public service operations of the Lone Star Gas Company. We are not convinced that the rentals paid by these occupants are fair and equitable. In some cases (Guthrie Gas Service Company, Meridian Gas Company, Stamford and Western Gas Company, Municipal Gas Company, Fort Worth Division, Northwestern Cities Gas Company, Council Bluffs Gas Company) salaries of employees who occupy space in the building are charged but no rental is charged (Ex. 26, p. 9 and p. 10).

Automotive and Construction Equipment.—Both Mr. Steinberger and Mr. Freese adopted the original cost of Automotive and Construction Equipment as the reproduction cost new as of December 31, 1931. Mr. Freese deducted the automobiles used by the Gasoline Department as not being used and useful in the public service operations of the Company. He also deducted construction equipment used for new construction (as distinguished from equipment used for maintenance and repairs). Both the Witnesses

Steinberger and Freese used unit excavation costs which included interest (return) on construction equipment and therefore under their set-up this construction equipment [fol. 19-27] would not be used and useful. This equipment may have been used in the past but if it was the Company has been compensated for its use in the reproduction cost new figures for Transmission Line Equipment which include the cost of all necessary equipment, including depreciation, return on investment and any other costs. If the Lone Star Gas Company's public service property should remain the same as it was December 31, 1931, this construction equipment would never be used again. If the Company undertakes new construction the Company will be compensated for the use of its construction equipment by capitalizing the depreciation and carrying charges on this equipment. Had Messrs. Steinberger and Freese used excavation costs which contemplated the furnishing of this equipment by the Company with no charge for interest (return) on the investment, then the unit costs arrived at by Messrs. Steinberger and Freese should have been less. We agree to the deductions made by Mr. Freese and find the reproduction cost new of Automotive and Construction Equipment to be \$405,618.24 (Ex. 28, p. 110).

Petrolia Field.—Operating expenses in the Petrolia Field amount to \$30,100 per year (Tr. p. 7949). This is the average cost of getting the gas to the well head. The 1931 production in the Petrolia Field was 379,984 M cu. ft. (Ex. 8, p. 77). The production is gradually declining (Ex. 8, p. 80). The field is not used to take care of any monthly peak loads in excess of the average requirements, the July and August production being approximately the same as the December and January production except for the normal decline (Tr. p. 10029). The Company purchases gas, under sufficient pressure to avoid compression, in the same general district (i. e. within a few miles), at six cents per M cu. ft. The gas produced by the Company is at approximately atmospheric pressure (wells in other fields are usually abandoned at approximately 25 lb. pressure) and must be compressed at an operating cost of 1.74 cents per M cu. ft. (Ex. 6, Vol. 9, p. 675). The net market value of the uncompressed gas is, therefore, 4.26 cents per M cu. ft. based upon the price being paid for gas under pressure in the same general district. This is a maximum value inasmuch as the Petrolia Field gas

produced by the Company is not available for peak load requirements in excess of the average load. Except during months of peak loads Panhandle gas could be delivered to the Petrolia Compressor Station in place of Petrolia Field gas at a cost to the Company of approximately two cents per M cu. ft. We find that the maximum market value at the well head of the Petrolia Field gas produced by the Company during the year 1931 was \$16,187.32 (379,984 M cu. ft. at 4.26 cents) and that the value of the gas produced is declining from year to year by reason of declining production. Since the average annual cost of operating the present wells and of getting the gas to the well head totals \$30,100, the Petrolia Field is a liability and not an asset in so far as public service operations are concerned. The present worth or fair value of the Petrolia Field public service property is [fol. 19-28] nil; and we have not, therefore, determined a reproduction cost new for leaseholds, gas wells, and field line equipment. We have included the full salvage value of all of the equipment in the Petrolia Field as part of Working Capital.

We cannot condone an attempt to include worthless properties in an appraisal for the apparent purpose of increasing the Rate Base. The inclusion of these properties was questioned in the hearing; the Company failed to show any justification for continuing to operate this field at a loss.

Administration and Legal Expense, Engineering and Supervision During Construction.—In arriving at the reproduction cost new of this item the witness Freese applied seven per cent to the reproduction cost new of the physical properties exclusive of leaseholds, real estate, furniture, tools, and automotive equipment. The testimony indicates that the actual cost historically incurred by the Company did not exceed approximately four and one-half per cent, of which all but approximately one and one-half per cent was charged to operating expenses. The allowance of seven per cent for Administration and Legal Expense, Engineering and Supervision During Construction would be a liberal allowance under wholesale reproduction new conditions. We are allowing for Administration and Legal Expense, Engineering, and Supervision During Construction the total amount found by Mr. Freese, viz., \$2,637,264.19 (\$753,083.78, \$1,882,709.46, Ex. 29, p. 2, \$420.27, \$1,050.68, Ex. 36, p. 11). The actual historical cost to the Company did not exceed

\$1,695,384.13 (4½%). The cost capitalized, i. e., not charged to operating expenses, was approximately \$565,128.04 (1½%), as compared with the \$2,637,284.19 (7%) which we are allowing.

Taxes During Construction.—The Company witnesses applied the 1931 tax rate paid by the Company to the physical property which would be under construction as of the first of the various years of an assumed wholesale reproduction period. The Witness Smith arrived at a figure of \$106,810.00 (Ex. 12, p. 13). The Witness Connor arrived at a figure of \$200,541.00 (Ex. 6, Vol. 9, p. 594). These figures were based upon the theoretical amount of taxes which would be paid on all of the physical property at the 1931 tax rate during an assumed construction period. The difference between the two Company witnesses is largely due to the assumption of different hypothetical construction programs. Now as a matter of fact Texas and Oklahoma political subdivisions rarely tax any work of any description under construction, and in the exceptional case the tax is usually applied to materials only. Furthermore, it is the practice of the Lone Star Gas Company to do most of its construction work during the advantageous summer months rather than during the winter months, which include the date of assessment. Mr. Freese arrived at a figure of \$9,681.29 (\$2,613.30, Ex. 29, p. 3; \$7,067.99, Ex. 36, p. 12) for Taxes During Construction, based upon a liberal interpretation of the historical experience of the Company. We believe that taxes during construction actually paid by the [fol. 19-29] Company during its history are not in excess of the amount arrived at by Mr. Freese. We further are of the opinion that the taxes during construction which would be paid during a reasonable wholesale construction program would approximate this amount. The taxes during construction which have been paid or the taxes during construction which would probably and actually be paid under a reasonable construction program should be the amount allowed rather than a theoretical amount which has never been paid nor would actually be incurred as taxes are now assessed by our taxing bodies. We are allowing \$9,681.29 as Taxes During Construction.

Interest During Construction.—In computing interest during construction, three factors must be considered, viz.:

(1) the items for which a construction period obtains, (2) the rate of interest, and (3) the length of the construction period for each item. The Company witnesses included interest during construction on the following items which were not included by Mr. Freese:

- Undeveloped Leaseholds
- Leaseholds Developed Before Being Purchased by Lone Star Gas Company
- Drill Tools and Equipment
- Repair and Cleanout Tools
- General Office Furniture and Fixtures
- Other General Furniture and Fixtures
- General Tools
- Automotive and Construction Equipment
- Taxes During Construction

The Company witness Smith included interest on interest during construction, which was not included by either the Company witness Connor or the witness Freese. The item Drill Tools and Equipment and the item Construction Equipment have been eliminated from Reproduction Cost New for what we believe to be good and sufficient reason, viz., the cost of using this or similar equipment, including depreciation, carrying charges (interest or return) has been capitalized and included in the reproduction cost new of the items of property, the construction of which required Drill Tools and Construction Equipment. The same reasoning applies to the exclusion of interest during construction on any General Tools or Automotive Equipment which may have been used during construction. Repair and Cleanout Tools, General Office Furniture and Fixtures, Other General Furniture and Fixtures, General Tools, and Automotive Equipment used in operating the property, were acquired ready to be put into use without any construction period being involved. These items are required when the property goes into operation and can be used the day they are bought. If any of these items were used for construction purposes, the carrying charges during construction have been included in the unit costs used in arriving [fol. 19-30] at our reproduction cost new figures. As a general rule, Taxes During Construction and Interest During Construction would not normally be paid out for the differ-

ent items of property prior to the end of the construction periods which we have hereinafter adopted; therefore, Taxes During Construction and Interest During Construction would not normally incur Interest During Construction charges. In evaluating leaseholds, we have adopted the actual cost and where the leaseholds were already developed before purchase the actual cost which we have adopted includes any carrying charges while the leasehold was being developed. Any interest during construction costs on leaseholds developed before purchase by the Lone Star Gas Company were borne by the original owner and the purchase price paid by the Lone Star Gas Company was for a leasehold and well ready to operate and which entailed no further carrying charges on the part of the Lone Star Gas Company. Interest during construction (or carrying charges during development) on leaseholds begins the day the leasehold is paid for and ends the day the leasehold begins production. If we allow such carrying charges to be capitalized as part of the Rate Base, then all undeveloped leaseholds (i. e., leaseholds still incurring such carrying charges) should be eliminated from the Rate Base until such time as the leaseholds begin to produce and the capitalization of carrying charges stops. A much more simple method of treating the carrying charges on undeveloped leaseholds is the method which we have adopted, viz., the inclusion of undeveloped leaseholds in the Rate Base from the date of their purchase. This treatment eliminates entirely the necessity of capitalizing as part of the Rate Base the carrying charges on undeveloped leaseholds, although it does necessitate the inclusion in the Rate Base of property which is not being used as of the date of the inquiry and, therefore, consumers will pay a rate based on the inclusion of carrying charges (or return) on leaseholds which will be used not by them but by future consumers. We concur with Mr. Freese in his elimination of items upon which interest during construction should not be computed.

The Company witness Smith computed interest during construction at a rate of seven per cent with an allowance of three per cent on deposits remaining in the bank three months or longer. The Company witness Connor computed interest during construction at a rate of eight per cent with an allowance of two per cent on bank deposits. The witness Freese used a straight six per cent with no deduction for

interest on bank balances. The Company has been able to borrow money for its construction needs at six per cent or less and on December 31, 1931, had some nineteen million dollars borrowed at six per cent (or less on a small amount).


The Company witnesses testified that the construction money could only be obtained at yearly intervals. The witness Freese based his computations on the securing of money at six month intervals during a construction program. [fol. 19-31] The testimony indicates that the Company has been able to secure construction money for large construction programs as and when needed. The Company witnesses based their construction periods upon hypothetical wholesale reproduction programs. Mr. Freese based his construction periods upon the time actually required to construct the different items of property. Mr. Freese figured his construction period for each item from the time the money would be made available until the time when the particular item of property would be put into operation. Mr. Freese's figure for Interest During Construction is \$1,650,467.52 (\$1,635,887.59 Ex. 29, p. 5; \$14,579.93 Ex. 36, p. 13). We believe this amount to be considerably in excess of the amount actually incurred by the Company by reason of the fact that the periods used by Mr. Freese exceed by from fifty to one hundred per cent the actual construction periods as indicated by the testimony and by reason of the fact that the money was actually obtained more nearly as needed than at six months intervals. We are of the opinion that \$1,650,467.52 would be more than sufficient to take care of interest during construction during any reasonable wholesale construction period (such as would be involved in reproducing the complete property); wherein the construction of a particular unit of property would not be started until there was a reasonable assurance that the particular unit of property would be put into operation very soon after it was completed. Under this assumption, Mr. Freese's allowance for Interest During Construction is entirely adequate and we are allowing the sum of \$1,650,467.52.

Preliminary and Organization Expense.—Mr. Freese accepted all of the preliminary and organization expenses as found by the Company witness Connor except costs of financing, promoters fee, detailed geological work and undistributed production expenses. The detail geological work and undistributed production expenses were included

by Mr. Freese as part of his general overheads and have been adequately allowed for by us as general overheads. The principle deductions from Mr. Connor's appraisal of Preliminary and Organization Expense are brokerage and promoters fees which the evidence shows were not actually incurred by the Company. Money could be obtained by the Company at par without incurring any cost of financing if a sufficient rate of interest were to be paid. We are allowing the sum of \$231,555.30 (\$215,660.00 Ex. 29, p. 6—\$15,895.30 Ex. 36, p. 14) for Preliminary and Organization Expenses. These expenses were computed on a wholesale reproduction new basis and are somewhat greater than were historically incurred.

Working Capital.—Both the witness Connor and the witness Freese computed Cash Working Capital on the basis of forty-five days average operating expenses. We believe that this basis of computing Cash Working Capital results in an amount which includes bank balances. Certainly it includes all except the minimum bank balances maintained by the Company. Work in Progress should not be allowed [fol. 19-32] as part of Working Capital inasmuch as the carrying charges on this work during the construction period will later be capitalized as Interest During Construction. (The Work in Progress was not used and useful as of the date of this inquiry.) This same reasoning is also applicable to a substantial part of Materials in Stock (\$635,260.17 Ex. 29, p. 7) which were for use on new construction as distinguished from materials to be used in maintenance, repairs and operation. However, we are allowing the full amount of Materials in Stock. We are accepting as a liberal allowance for Working Capital the amount arrived at by Mr. Freese, \$1,472,201.53 (\$1,513,432.43 Ex. 29, p. 7 Minus \$41,230.91 Ex. 36, p. 16) Plus \$16,168.38 (11.44% of \$141,332.02 Ex. 29, p. 20 and Id. "Field Line Equipment") which is the salvage value of Petrolia Field Line Equipment, making a total for Working Capital of \$1,488,369.91.

Going Value.—The latest pronouncement of the United States Supreme Court on the subject of "going value" is to be found in the case of Los Angeles Gas & Electric Company v. Railroad Commission of the State of California, et al., 53 Sup. Ct. 637. In this decision Mr. Chief Justice Hughes in delivering the opinion of the Court discusses



practically every important case on going value thus far coming before the Supreme Court of the United States. One of the cases discussed is *Des Moines Gas Company v. Des Moines*, 238 U. S. 153, wherein the Court recognizes that there is an element of value in an assembled and established plant doing business and earning money over one not thus advanced. This element of value is recognized as being a property right which should be considered in determining the value of the property on which the owner has the right to make a fair return. Each case must be controlled by its own circumstances. In speaking of this element the Court uses the following language:

"Included in going value as usually reckoned is the investment necessary to organizing and establishing the business which is not embraced in the value of its actual physical property. In this case, what may be called the inception cost of the enterprise entering into the establishing of a going concern had long since been incurred. The present company and its predecessors had long carried on business in the City of Des Moines, under other ordinances, and at higher rates than the ordinance in question established. For aught that appears in this record, these expenses may have been already compensated in rates charged and collected under former ordinances. As we have said, every presumption is in favor of the legitimate exercise of the rate-making power, and it is not to be presumed, *without proof*, that a Company is under the necessity of making up losses and expenditures incidental to the experimental stage of its business." (238 U. S. 165-6.) (Italics ours.)

[fol. 19-33] From a study of the language in this quotation and from the balance of the case it is plain that the rule evolved is that even though the company involved is admittedly a going concern that there need be no inclusion in the rate base for going value, as such, unless there is proof that costs were incurred as development costs which have not been recovered through rates charged and collected in the past.

The testimony in this case is clear that the Lone Star Gas Company since its advent into the gas business in 1909 to the present time shows an enviable record of earnings, which earnings were sufficient to refund to its owners a very substantial sum of money annually and which would have been

enough to reimburse them had it been necessary for them to make an actual out-of-pocket cash outlay for the cost of building up the business. This is in addition to moneys which were available to the Company at the same time for providing the expenses of operation, meeting the depreciation requirements, and giving to the owners a liberal return on their invested capital. There is absolutely no showing that any costs of building up the business which may have been incurred by its owners have not been recouped by them in the rates charged in the past.

In fact there is no specific showing of any costs incurred in building up the business.

We do not believe that because the Company had as of December 31, 1931, a property in operation with customers attached, a personnel capable of running the business, regular established business routine, records, etc., that it logically follows that inception costs of building up the business must have been incurred which have not been recouped. Certainly proof of these facts alone does not provide the "proof" required by the Des Moines Gas decision. It is just as logical to suppose that there existed at the inception of the business a waiting public urgently in need of natural gas service, with towns anxious to attach to the Company's lines, in which case there would have been little, if any, development cost or expense of any sort in overcoming the inertia of a static business and in getting the business under way. Such a business should pay its own way from the start and there is no reason to assume that rates would not be sufficient from the beginning to pay all development costs, as, when, and if incurred. The Company serves a territory which has shown a substantial growth in both its population and in its business life and the Company has expanded its system naturally as new markets have appeared. It is inconceivable that the company could have prevented new business from presenting itself as a natural consequence of the territory's development and it is certain that much of such new business came without any development expense whatsoever being actually incurred.

A careful examination of the testimony of the witnesses in this case shows that not one of them was able to point out, as a historical fact, any expense which could properly be considered a cost of making the plant a going concern, give

the particular cost to the Company of the same, or give any [fol. 19-34] of the items covered by such expenses. Notwithstanding the fact that the history of the Company in this respect has apparently been ignored, this Commission is of the opinion that the financial transactions of the past which represent expenditures in building up a business are of more than historical interest, it being said in *City of Houston v. Southwestern Bell Telephone Company*, 259 U. S. 325:

“Whether going concern value should be considered and allowed at all in determining the basis for rate-making, and if allowed what the amount of it should be, depends upon the financial history of the company * * * .”

Examination of the testimony shows that Mr. Freese is the only one testifying in this case on the subject of going value who made any reference to the history of the company. Mr. Connor and Mr. Smith denied making any examination of the books of the company, or any study of the history of the company and were both emphatic in their testimony that none was necessary.

In the *Des Moines Gas Company v. Des Moines*, 238 U. S. 153, *Cedar Rapids Gas Company v. Cedar Rapids*, 223 U. S. 655, and other cases, it has been held that the cost of paving is not a proper inclusion in a rate base when it was shown that such cost was not historically incurred. In *Wabash Electric Company v. Young*, 53 Sup. Ct. 234, a case lately decided, the cost of financing was excluded from the rate base where there was no evidence that such expense was incurred as a historical fact or that in the event the property should be reconstructed that such cost was necessary to be incurred.

The rule shown in these cases and by analogy applying to going value is to the effect that there should be no allowance in a rate base for going value unless it be proven that comparable costs were incurred historically to those sought to be included.

But granting, however, for the moment the propriety of including an allowance for going value, we pass to the question of how it is to be included in a rate base. An examination of the testimony of the witnesses in this respect is interesting.

The Company witness Connor computed the interest, depreciation, and taxes on the idle plant which would be

incurred in a hypothetical reproduction cost new program and then called the result Going Value. The result was termed a measure of the value of the following (Ex. 6, Vol. 9, p. 615).

(a) 230,000 domestic consumers using 80 M cu. ft. per annum per consumer.

(b) 1,400 industrial consumers using a total of 15,275,000 M cu. ft. per annum.

(c) Industrial consumers temporarily disconnected.

(d) An advantageously situated gas supply in excess of present maximum requirements.

(e) Trained personnel.

(f) Operating routine and records.

[fol. 19-35] (g) Revenue sufficient to allow a reasonable return on Going Value.

In computing Going Value the witness Connor deducted from the \$11,457,997 of interest, depreciation, and taxes on idle plant during his hypothetical wholesale development period, Industrial Revenue in the sum of \$3,958,920, leaving \$7,499,077 as his Going Value (Ex. 6, Vol. 9, p. 614).

The Company witness Smith's Going Value consisted of the following (Ex. 13, p. 2):

(a) Interest, depreciation, and taxes on idle plant during a hypothetical wholesale development period	\$7,370,984
(b) Costs of securing business	20,000
(c) Costs of training personnel	194,758
(d) Costs of records	480,000
Total	\$8,065,742

Mr. Smith allowed no credit for Industrial Revenue during the hypothetical development period. If he had made such an allowance for the estimated net industrial revenue, his going value would have been almost halved.

We have allowed under other headings what we consider to be the full fair value of the Company's gas supply, and no additional allowance should be made under this heading. Mr. Connor makes an additional allowance under this heading (Item d); Mr. Smith made no such additional allowance.

Mr. Connor has also evaluated as part of his going value the ability of the Company to earn a reasonable return on the Going Value itself (Item g). Such an allowance would defeat the whole purpose of this inquiry as it would tend to arrive at whatever value the present gas rates would support. If we eliminate these latter two items we find that the Company witnesses Connor and Smith have considered going value as consisting of substantially the same items, viz; (1) Business secured [(Connor Items (a), (b), (c)—Smith Item (b))]; (2) Training personnel [(Connor Item (e)—Smith Item (c))]; and (3) Records [(Connor Item (f)—Smith Item (d))].

There is a fundamental difference, however, in the methods by which Messrs. Connor and Smith have evaluated these items. Mr. Connor measures their value by the estimated losses of return (i. e. interest), depreciation, and taxes on idle plant during his hypothetical development period and arrives at \$7,499,077. Mr. Smith, however, evaluates these items (business, personnel, and records) at their estimated cost to the Company of \$694,758 and then adds to this the estimated losses of return, depreciation and taxes on idle plant during his hypothetical wholesale development period. Messrs. Connor and Smith also seem to be at variance as to what constitutes the "business" in which the Lone Star Gas Company has a property right. The Lone Star Gas Company is a transmission company wholesaling gas to some ten distributing companies, most of which are affiliated companies formed for the purpose [fol. 19-36] of distributing gas supplied by the Lone Star Gas Company. Mr. Connor considers the business of 230,000 domestic consumers and 1400 industrial consumers attached to and by the distributing companies a property right of the Lone Star Gas Company. This "business" may be a property right of the distributing companies to which it is attached and by whom it has been largely developed, but it is certainly not a property right of the Lone Star Gas Company. Mr. Smith, on the other hand, seems to take into consideration only the business of the actual customers (distributing companies) of the Lone Star Gas Company and estimates the cost of securing this business at \$20,000.

Mr. Smith computed depreciation at a rate of 4 per cent per annum, whereas Mr. Connor stepped his rate up from 4 per cent in the first development year to 6.5 per cent for the sixth development year and arrives at a total of \$3,-

940,187 as depreciation on idle plant. According to Mr. Connor's Exhibit 18, the total depreciation during the first six years could not possibly exceed two per cent per annum, replacements during the first six years being practically nil.

Mr. Smith was frank to admit that in his experience in the gas business he had never analyzed the affairs of any one company so as to know the cost of securing business, cost of training personnel or costs of records, and since Mr. Smith did not make any effort to estimate the actual historical costs as incurred by the Lone Star Gas Company, his estimates for these items can not be regarded as anything else than conjecture and speculation on his part.

The case which is probably generally thought to be the leading one on going value, and to which we have not previously alluded is Galveston Electric Company v. Galveston, 258 U. S. 388. Because the United States Supreme Court approved the decision rendered in the trial court, and because of the absolute clarity of the opinion, we quote District Judge Hutcheson in his District Court opinion, 272 Fed. 147:

"I sustain the fifth exception of the defendants, addressed to the action of the master in allowing for development cost or going concern value \$530,000. I think it clear that in this particular the master erroneously followed the practice adopted by some state Public Utility Commissions.

It might well be that a rate-making body would be justified in adding something of value to the plant as ascertained to compensate it for lean years, and it might also be that in reviewing the action of such body a court or master might set up such a basis of valuation for itself, as, for instance, a "bare-bones" or junk valuation, as that to fairly determine the issue some addition would have to be made on this score. *In view of the valuation used by the master in this case, of historical reproduction cost, with an appreciation added for the present-day valuations, with all overheads (see table below) properly added and allowed [fol. 19-37] for, taking the city of Galveston as it is, with a street car service already fully developed, and a public demanding street car service, and certain to take advantage of it, and allowance for going concern in this case, in addition to the allowances already made, as a basis for enjoined*

ing the exercise of a legislative prerogative must be discarded.

Table of Overheads

Engineering and supervision	\$60,000
Law expense	7,029
Interest during construction	44,179
Injuries and damages during construction	11,492
Taxes during construction	7,383
Organization and business management	73,281
	<hr/>
	\$203,344

It is very evident that the parties, in making their agreement on value, and the master, in valuing the plant, valued it as a plant in use, and not in any sense as junk, or a dead and idle property. The agreement between the parties showed plainly that they had included everything in the valuation of the property except the franchise value, going-concern value in the sense of development cost, bond discount, and brokerage, and it is evident that the master, in making his allowance for this item, made it, not for the purpose of making a distinction between junk and live value, but in order to add to his valuation an allowance for development cost somewhat analogous to the procedure earlier adopted by the Wisconsin Public Utilities Commission.

In any case, where a plant is fully valued upon the cost of reproduction basis, the allowance of any element for development cost cannot, in a judicial proceeding, be reasonably sustained for the reason that such a utility is entitled to a reasonable rate of return upon its plant from the day it goes into operation, and the court does not take into consideration at all that there may be lean years before the fat ones. Therefore a court in a rate case has nothing to do with any increment to the actual value of the plant acquired by the successful operation of it, nor in a case of valuation, where the cost of the plant and its historical development is determined, does the court add anything to its capitalization for rate-making purposes for its unsuccessful years, nor deduct anything for its successful ones.

I have already in this opinion quoted from 212 U. S. the proposition that the present valuation cannot be en-

hanced by errors of losses in the past. I think it clear, therefore, that if the court, as a basis for inhibiting legislative action, should add to the property a purely speculative increment of going concern upon the view that the [fol. 19-38] public, by using the property, has increased its value. It would be doing what the Supreme Court has forbidden; that is, it would disregard the essential conditions of the public use, and 'make the public use destructive of the public right.' *In short, when 'going concern' is stripped of its involvement and obscurity, its attractive names and titles, it presents itself on the one hand where the past record of the utility has been profitable, as nothing more than good will, which the courts have always refused to allow, and, on the other hand, where the past record has been unprofitable, as nothing more than an effort to capitalize errors and misfortunes, as to the impropriety of which the decisions of the Supreme Court are equally clear.*

The confusion which has resulted in this matter is that which springs from the failure to distinguish the essential principle involved in these rate controversies, that a utility is entitled to earn on its property a fair return, and that the rate can neither be increased, on the one hand, by the fact that the company has enjoyed a profitable business, nor decreased, on the other hand, by the fact that its business has been unprofitable; either because of the lack of support of the utility by the people of the community, or of any other untoward features which would gravely affect the company, if its property were valued for the purpose of bargain and sale.

* * * * *

In short, the real question here is the value of the plant in operation, and this value should be the same for the rate-making purposes, whether its past history has been successful or unsuccessful. I have therefore sustained the exception to this feature of the master's report, and have myself valued the property, as I think, in the light of the evidence, it should be valued, as a complete and going concern, useful and ready to serve the public, with its organization perfected and in shape, and its public ready and waiting to be served." (Italics ours.)

The language of Mr. Justice Brandeis in rendering the opinion for the Supreme Court, 258 U. S. 394, follows:

"If the rule were that a prescribed rate is to be held confiscatory in case net earnings are not sufficient to yield 8 per cent on the amount prudently invested in the business, there might be propriety in counting as part of the investment such amount, if any, as was necessarily expended at the start in overcoming initial difficulties incident to operation and in securing patronage. But no evidence of any such expenditure was introduced; and the claim of the company does not proceed upon that basis. What was presented by the witnesses are studies, on various theories, of what past deficiencies in net income would aggregate, if 4 per cent were allowed as a depreciation annuity and 8 [fol. 19-39] per cent compound interest were charged annually on the value of the property used. These calculations covered, on one basis, the period of 39 years since the original horse-car line was built; on another, the period of 15 years since the appellant purchased the property as a going concern. If net deficits so estimated were made a factor in the rate base, recognition of 8 per cent as a fair return on the continuing investment would imply substantially a guarantee by the community that the investor will net on his investment ultimately a return of 8 per cent yearly, with interest compounded on deferred payments; provided only that the traffic will in course of time bear a rate high enough to produce that amount. (Footnote omitted.)

The fact that a utility may reach financial success only in time or not at all, is a reason for allowing a liberal return on the money invested in the enterprise; but it does not make past losses an element to be considered in deciding what the base value is and whether the rate is confiscatory. A company which has failed to secure from year to year sufficient earnings to keep the investment unimpaired and to pay a fair return, whether its failure was the result of imprudence in engaging in the enterprise, or of errors in the management, or of omission to exact proper prices for its output, cannot erect out of past deficits a legal basis for holding confiscatory for the future, rates which would, on the basis of present reproduction value, otherwise be compensatory. (Knoxville v. Knoxville Water Co., 212 U. S. 1, 14.)

Nor is there evidence in the record to justify the master's finding that a business brought to successful operation 'should have a going concern value at least equal to one-third of its physical properties.' *Past losses obviously do*

*not tend to prove present values. The fact that a sometime losing business becomes profitable eventually through growth of the community or more efficient management, tends to prove merely that the adventure was not wholly misconceived. It is doubtless true, as the master indicated, that prospective purchaser of the Galveston System would be willing to pay more for it with a record of annual losses overcome, than he would if the losses had continued. But would not the property be, at least, as valuable if the past had presented a record of continuous success? And shall the base value be deemed less in law if there was no development cost, because success was instant and continuous? Or, if the success had been so great that, besides paying an annual return at the rate of 8 per cent, a large surplus had been accumulated, could the city insist that the base value be reduced by the amount of the surplus? Compare *Newton v. Consolidated Gas Co.*, ante, 165.*

In determining the value of a business as between buyer and seller, the goodwill and earning power due to effective [fol. 19-40] organization are often more important elements than tangible property. Where the public acquires the business, compensation must be made for these, at least under some circumstances. *Omaha v. Omaha Water Co.*, 218 U. S. 180, 202, 203; *National Waterworks Co. v. Kansas City*, 62 Fed. 853, 865. And they, like past losses, should be considered in determining whether a rate charged by a public utility is reasonable. Compare *Venner Co. v. Urbana Waterworks*, 174 Fed. 348, 352. But in determining whether a rate is confiscatory, goodwill and franchise value were excluded from the base value in *Cedar-Rapids Gas Light Co. v. Cedar Rapids*, 223 U. S. 655, 669, and *Des Moines Gas Co. v. Des Moines*, 238 U. S. 153, 169; and the expressions in *Denver v. Denver Union Water Co.*, 246 U. S. 178, 184, 191 and in *Lincoln Gas & Electric Light Co. v. Lincoln*, 250 U. S. 256, 267, are not to be taken as modifying in any respect the rule there declared. Going concern value and development cost, in the sense in which the master used these terms, are not to be included in the base value for the purpose of determining whether a rate is confiscatory." (Italics ours.)

The foregoing decision shows clearly the impropriety of the measurement of going value involving the computation of interest, depreciation and taxes on an idle plant. It is

the plain language of the Supreme Court opinion in the Galveston Electric case, that past losses do not tend to prove present values; that a company may not erect out of past deficits in its income an enhanced rate base to make confiscatory a rate which could otherwise be compensatory.

It is therefore our opinion that the allowance as to interest, depreciation and taxes on an idle plant as computed by Mr. Connor and Mr. Smith, should not be allowed.

The three appraisals submitted by Messrs. Freese, Smith and Connor are all cost of reproduction appraisals, and all contain far more inclusive allowances for overheads than those found in the Galveston Electric Company case. All three appraisals include an allowance for administration and legal expense, engineering and supervision during construction, interest during construction, taxes during construction, and preliminary and organization costs. There is also included an allowance in each for materials and supplies and cash working capital.

There is included the direct structural costs or the costs for physical plant, and as part of this amount the job overheads which include insurance, both workman's compensation and public liability, damages, and all other costs that can conceivably occur as construction costs in the reconstruction of the company's properties.

To include as a part of the value of the Company's property an allowance for going value in addition to the items mentioned in the two preceding paragraphs, is contrary to the rule announced by Judge Hutcheson, as quoted above.

[fol. 19-41] The appraisal of Mr. Freese was not made upon the basis of a static or inactive plant, but as a going concern, having business attached, gas flowing from its wells through its lines, with operating personnel, business routines established, and with operating records, all of which insure a smooth flow of service to the public. Mr. Freese included in his appraisal in the general overheads a number of items ordinarily considered items of going value. He stated that under the head of administration and legal expenses during construction and engineering and supervision during construction, he included the cost of engineering, geological and accounting records. Mr. Freese testified that he had treated the cost of acquiring new business as a current operating expense and that the 1931 new business and advertising expense amounted to \$126,125.98

exclusive of compensation for administrative officials and other general expenses. He testified that the training of personnel was proper operating expense; that costs of training personnel had always been, and were being charged to operating expenses during the year 1931. No data were available as to the rate of personnel turn-over. We must take into consideration that we have already allowed as a part of the 1931 operating expenses the following costs of securing new business:

New Business Advertising Salaries	\$ 9,548.77
New Business Soliciting and Expense	27,969.98
Advertising Supplies and Expense	81,234.85
New Business Supplies and Expense	7,372.38

We have allowed as part of the 1931 operating expenses the following costs of establishing "goodwill":

Charitable Donations	\$ 9,848.67
Donations and Subscriptions	20,215.94

We have allowed as part of the 1931 operating expenses the following costs of developing "an advantageously situated gas supply in excess of present maximum requirements":

Dry Hole Expense	\$79,453.12
Cancelled and Surrendered Lease Expense	99,140.73

We have allowed as part of the 1931 operating expenses the following items which were to a large or small degree costs of securing business, developing "an advantageously situated gas supply in excess of present maximum requirements," training personnel, developing operating routines, and preparing geological, engineering and bookkeeping records:

Administrative Salaries	\$145,745.68
Other General Office Salaries	307,850.98
General Office Salaries and Expense	23,894.23
General Office Traveling and Incidental Expense	22,907.99
General Stationery and Printing	16,011.25
Miscellaneous General Administrative Expense	49,012.06

[fol. 19-42] That the Company has not actually experienced any losses on account of inception costs except in the relatively small amount testified to by Mr. Freese is indi-

ated by the following tabulation which shows the per cent of the undepreciated book cost available for return and depreciation during the history of the Company.

Period	Book Cost Public Service Property	Amount Available For Depreciation and Return	Per Cent of Undepreciated Book Cost
June 4, 1909—May 31, 1910..	\$4,741,620.41	\$57,607.99	1.21
June 1, 1910—Feb. 28, 1911..	4,790,284.17	160,761.86	3.35 (4.47 per annum)
Mar. 1, 1911—Feb. 28, 1912..	4,994,064.08	610,992.63	12.23
Mar. 1, 1912—Feb. 28, 1913..	5,800,664.91	814,811.21	14.04
Mar. 1, 1913—Feb. 28, 1914..	6,164,123.74	1,114,369.22	18.08
Mar. 1, 1914—Feb. 28, 1915..	6,980,985.13	1,164,663.69	16.68
Mar. 1, 1915—Dec. 31, 1915..	7,715,247.24	736,351.36	9.54 (11.45 per annum)
1916	8,090,251.99	1,101,618.66	13.61
1917	8,627,698.92	901,798.88	10.45
1918	9,399,508.86	694,208.51	7.38
1919	12,749,862.20	1,032,035.11	8.09
1920	16,225,774.18	1,227,479.44	7.38
1921	16,336,266.61	1,331,944.53	8.15
1922	17,572,198.80	1,677,754.21	9.54
1923	18,870,227.60	2,232,771.43	11.83
1924	20,281,257.29	2,843,831.77	14.02
1925	24,294,693.33	3,950,790.60	16.26
1926	25,113,114.07	4,334,870.94	17.26
1927	33,307,350.60	4,513,876.52	13.55
1928	36,879,954.99	5,028,295.46	13.63
1929	44,449,143.87	5,869,183.24	13.20
1930	47,703,209.28	5,297,491.90	11.10
1931	47,776,749.63	4,605,721.83	9.64

These figures are taken from Mr. Hulcy's testimony (p. 11,176 to p. 11,180), and have not been corrected by us. They show a total of \$51,303,230.99 available for depreciation and return during the entire period. The weighted per cent of the undepreciated book cost is 12.03. The book cost as of December 31, 1931, is slightly higher than the total reproduction cost new as of December 31, 1931, as determined by us. Approximately two per cent is the annual depreciation on a 6 per cent sinking fund basis as is hereinafter found by us and is applicable where both return and depreciation are computed on an undepreciated book cost. The Company has not only recouped out of current revenues any losses due to idle plant incurred in the past but has made a weighted average return of approximately ten per cent on an undepreciated book cost after allowing for depreciation (2 per cent per annum on 6 per cent sinking fund basis).

Mr. Freese testified that the historical losses assuming a 6 per cent return were substantially \$445,326 (Ex. 30, p. 9) and had occurred during the period June 4, 1909, to Febru-

ary 28, 1911, and that this amount could have been easily amortized by the end of 1917 out of earnings in excess of an eight per cent return (\$1,117,494—Ex. 30, p. 4), and further that a substantial part of the property on which the early losses had occurred had been removed by the end of 1917. [fol. 19-43] Mr. Freese has included in his reproduction cost new figures any plant which was idle as of December 31, 1931, and in particular he included undeveloped leaseholds which have been allowed by us at Mr. Freese's figure. It certainly would not be proper to allow idle plant as part of the rate base and at the same time allow a capitalization of interest and depreciation on idle plant. Even assuming that it would be proper to consider losses due to idle plant, Mr. Freese testified that the history of the Company indicates that the property could be reproduced within a reasonable period of time wherein only a small portion of the idle plant estimated by Messrs. Connor and Smith would be incurred. (See Ex. 30, p. 2.)

To summarize our conclusions of the foregoing discussion, we find the allowance of going value determined by Messrs. Smith and Connor to be without any sanction either in reason or in the controlling decisions of the United States Supreme Court. We find further that the adoption of the reproduction cost new value as determined by us and as discussed herein containing, as it does, a complete allowance for all overhead expense, together with our allowance for operating expenses, fully and justly compensate the Company for all development costs which have been incurred or which would be incurred on a reasonable reproduction of the Company's properties and that such an allowance thus determined is ample to cover any and all items entering into and forming a part of going value.

Reproduction Cost New Summary.—In accordance with the considerations hereinabove set forth, we find the Reproduction Cost New for the various items of property embraced by the Lone Star Gas Company public service property to be as follows:

Gas Wells	\$2,044,318.76
Other Production System Structures	14,313.70
Repair and Cleanout Tools and Equipment ..	42,411.44
Gathering System Rights of Way	10,062.53
Field Measuring Station Structures	37,308.57
Field Measuring Station Equipment	142,558.62

Field Line Equipment	847,010.72
Transmission Measuring Station Land Including Improvements	78,944.10
Other Transmission System Land Including Improvements	24,716.45
Other Transmission System Leaseholds Including Improvements	3,463.71
Transmission System Rights of Way	1,007,433.38
Transmission System Measuring Station Structures	172,676.20
Other Transmission System Structures	130,661.27
Transmission System Measuring Station Equipment	456,621.63
Transmission Line Equipment	26,932,811.12
Compressing Stations	4,894,617.14
[fol. 19-44] General Office Building Land	41,545.97
Other General Land	51,797.38
General Office Structure	333,535.29
Other General Structures	59,716.19
General Office Furniture and Fixtures	204,520.67
Other General Furniture and Fixtures	10,967.71
General Shop Equipment	103,756.02
General Tools	164,020.99
Automotive and Construction Equipment	405,618.24
General Telephone System	373,591.15

Reproduction Cost New of Physical Property Exclusive of Leaseholds	\$38,588,998.95
Administration and Legal Expense, Engineering and Supervision During Construction	2,637,264.19
Taxes During Construction	9,681.29
Interest During Construction	1,650,467.52
Preliminary and Organization Expense	231,555.30
Working Capital	1,488,369.91

Reproduction Cost New of Property Exclusive of Leaseholds \$44,606,337.16

Leaseholds.—To our knowledge, there are only three practicable methods of treating leaseholds. These will be stated and consecutively discussed as follows:

Method (1) is to allow return and annual depletion on the market value of the leaseholds which market value will include any enhancement over original cost, whether this en-

hancement be brought about by explorations of the Company, or by exploration of the owners of leases abutting those of the Company. In this connection, it must be observed that the successful explorations by the Company (those resulting in finding gas in commercial quantities and thereby enhancing the value of the leases) were attended by certain unfortunate ventures, in which dry holes resulted and in the condemnation of particular leases. Under Method (1), dry hole expense and the cost of condemned leases could not be allowed as operating expenses. Obviously it would be wholly improper to allow a return on the enhanced market value of leaseholds which have been proven up and at the same time charge off disproven leaseholds to operating expenses at cost. Under Method (1) if dry hole expense and cancelled and surrendered lease expense were to be allowed as an operating expense the Company would receive all of the "profits" by reason of an enhanced rate base, while the consumer or rate payer would stand all the "losses" through the allowance of the cost of all unsuccessful explorations as operating expenses. From the meager testimony available as to market value of leaseholds, we are of the opinion that the market value of the leaseholds held by the Lone Star Gas Company as of December 31, 1931, did not exceed their actual cost of \$2,231,- [fol. 19-45] 676.11 (exclusive of Petrolia Field). This is entirely reasonable when it is understood that of this amount \$1,263,871.38 (Ex. 28, p. 1) is for leaseholds as yet undeveloped; that of the \$967,804.73 (Ex. 28, p. 1) actual cost of leaseholds now developed, only \$165,353.77 (Ex. 36, p. 13) worth of these leaseholds were undeveloped when purchased. In other words, of the \$967,804.73 actual cost of leaseholds now developed, \$802,450.96 (\$967,804.73 minus \$165,353.77) worth were bought after the enhancement due to development had already taken place. Most of the enhancement of value over the original cost, if any, must have occurred on these now developed leaseholds which actually cost \$165,353.77 and which were the only developed leaseholds that originally were bought in an undeveloped state. As against this enhancement must be taken into consideration the fact that the cost of comparable leaseholds was shown to be less as of December 31, 1931, than during the period when most of the leaseholds were purchased, and the further fact that as of December 31, 1931, the developed leaseholds had been depleted to the extent of \$240,062.19

(Ex. 27, p. 37 and Ex. 36, p. 17) based on the original cost of the leaseholds. We have not made computations as to return or domestic gas rate based on this method of evaluating leaseholds, due to the paucity of evidence as to the market value of leaseholds as of December 31, 1931. The application of this Method (1) would produce a greater reduction in domestic gas rates than that which we have hereinafter ordered on the basis of Method (2), which follows. If on December 31, 1931, the Lone Star Gas Company had bought the leaseholds from other owners at the market value, that market value inherently would have included compensation for dry hole and cancelled and surrendered lease expense.

Method (2) is a service-at-cost method whereby the "losses," dry hole expense and cancelled and surrendered lease expense are charged to operating expenses, while the leaseholds are capitalized and included in the Rate Base at actual cost (less depletion) and not at the enhanced or market value which would include all "profits" arising from successful explorations. As long as dry hole expenses and cancelled and surrendered lease expenses are allowed as part of operating expenses at actual cost, the only fair, equitable and lease speculative method of evaluating leaseholds as part of the rate base is at actual cost less depletion. Each of the witnesses who valued undeveloped leaseholds did so at actual or book cost, including original consideration, delay rentals to December 31, 1931, and any costs of acquisition capitalized on the books of the Company (i. e. not charged to operating expenses). Mr. Freese included in this account all of the non-producing leaseholds, which were carried on the books as such, in the amount of \$1,263,871.38 (Ex. 27, p. 1). (This latter amount does not include any leaseholds in the Petrolia District.) Mr. Steinberger included in this account all unproven non-producing leaseholds and all unproven or disproven parts of producing leaseholds, and excluded all proven non-producing leaseholds or proven parts of the non-producing leaseholds. [fol. 19-46] (Proven acreages are defined in Exhibit 8.) Mr. Steinberger's appraisal of undeveloped leaseholds is \$944,957.55 (Ex. 7, p. 2) on the basis of the actual per acre cost to the Company. (The \$944,957.55 does not include any leaseholds in the Petrolia District.) We find the actual or book cost of the non-producing or undeveloped leaseholds as of December 31, 1931, to be \$1,263,871.38. This cost in-

cludes delay rentals to December 31, 1931, and any costs of acquisition capitalized on the books of the Company. If there were any additional costs of acquisition (not capitalized) such costs were charged to operating expenses. The Lone Star Gas Company has a regularly maintained operating department which handles the detail work of acquiring leaseholds. The operating expenses of this department have been included in our allowance for operating expenses for 1931, (as well as all other years) during which year very few leaseholds were acquired. It is not apparent to us that the cost of acquisition of a leasehold necessarily adds value. It is clear to us that the cost of operating a leasehold department to acquire leaseholds is a proper charge to operating expenses and if the costs of operating such a department to acquire leaseholds are changed to operating expenses, then these costs should not also be capitalized or allowed as part of the Rate Base. The testimony indicates that the few leaseholds bought in 1931 were bought at a less cost than comparable leaseholds were being purchased during the period when the Company purchased most of its leaseholds. Mr. Freese valued developed leaseholds at \$967,804.73 exclusive of the Petrolia District Leaseholds (Ex. 27, p. 1). We find this figure to be the actual or book cost of the producing leaseholds, plus delay rentals to the date of development, plus such costs of acquisition as were capitalized, all as reflected by the books of the Company. This figure (\$967,804.73) also includes gas well construction where gas wells were bought as integral parts of leaseholds, in which cases the cost of the leaseholds as reflected by the books includes the gas well construction. In fact most of these producing leaseholds (\$802,450.98 cost out of total cost of \$967,804.73) were bought already developed and for these leaseholds it is either not practicable or not possible to separate on the books of the Company the gas well construction costs from the leasehold cost itself. In any case, wherever we have taken the gas well construction together with the leasehold, exactly the same reasoning is applicable to the combination leasehold-gas well construction as is applicable to the leasehold itself. We have, therefore, included gas well construction under this head where it was not possible or practicable to segregate this item. The Company witness Steinberger cited instances where his appraised cost of gas well construction on certain of these leaseholds was as much or more than the actual cost of the leasehold and well con-

struction together. The Company witness Dunn compared the value of the gas produced over certain periods of time from certain of these leaseholds with the cost of these leaseholds. Although such comparisons are without value un-[fol. 19-47] less all of the factors involved are known, some of the comparisons most favorable to the Company's contentions were on leaseholds purchased shortly before December 31, 1931. The actual cost of those leaseholds (including gas well construction) bought just prior to December 31, 1931, while not proof of market value, is convincing as to the market value or reproduction cost new value of these leaseholds as of December 31, 1931. It is quite conceivable that a condition might obtain in the purchasing and marketing of leaseholds wherein the owner of a leasehold would be willing to transfer a leasehold to the Company for a very nominal consideration over and above the agreement that the Company would pay a one-eighth royalty on all gas produced. In applying this Method (2) we have allowed depletion charges annually for the repayment to the Company of the actual cost of the leaseholds as the gas is taken out of the ground and the leaseholds depleted. These annual depletion charges are free capital and must be deducted from the original cost of the leaseholds to obtain the actual cost of the remaining gas (or in other words, the present worth on an actual cost basis). In finding the present worth of Developed Leaseholds on an actual cost basis, Mr. Freese deducted from the original cost (\$967,804.73) which we have adopted, the per cent of depletion which has taken place since the leaseholds were acquired. If a leasehold cost \$20,000, it was assumed to have a present worth of 100 per cent of \$20,000 the day it was purchased; if it has been depleted 25 per cent as of December 31, 1931, it had a present worth of 75 per cent of \$20,000, or \$15,000. The amount of depletion was determined for each developed leasehold (including well construction if bought with the leasehold) on the basis of the decline in rock pressure with the necessary corrections thereto. We consider the method used in finding the depletion quite accurate. When the depletion percentages so found are applied we find a present worth of \$727,742.54 (\$685,585.98 Ex. 27, p. 37; \$42,156.56 Ex. 36, p. 18), based on actual costs. The 1931 depletion charges have been computed on the basis of the gas removed during 1931. Under this Method (2), we find a fair value to be included in the Rate Base as of December 31, 1931, for Leaseholds of

\$1,991,613.92 (Undeveloped Leaseholds \$1,263,871.38, Developed Leaseholds \$727,742.54).

Method (3) is to allow the Company the market value of the gas produced at the prevailing field price at the well head. This method is in principle suggested by the Company witness Huley in Exhibit 9. Further Mr. Huley testified as follows: "We are assuming that our own gas reserves are worth exactly the same, or that the gas produced by the Company in any field is really worth exactly the same as that purchased from any other producer. It is worth that much and no more, and we have gone about it on that assumption" (Tr. p. 2143). The market value of the gas at the well head as of December 31, 1931, has been established for the different fields more definitely in this hearing than perhaps for any other "commodity." This method would compensate for all of the costs of getting the [fol. 19-48] gas to the well head and would include a return on and amortization of the market value of the leaseholds. In fact the market value of leaseholds is determined by the well head price. The Company now buys from other owners approximately 72 per cent of its requirements (Ex. 6, Vol. 9, p. 675). Under this method the Company would be paid the same price at the well head for the approximately 28 per cent which the Company produces as it pays other owners for the 72 per cent. Evidence of the fact that the Company considers the prevailing field prices fair is the fact that the Company pays royalty on the basis of the prevailing field price. The results under this method would be the same as though the Company bought at the well head one hundred per cent of its gas requirements from other owners. In making calculations under this method we have added to operating costs the amount which the Company produced gas would cost if bought from other owners; we have deducted from the Rate Base all gas production property up to the well head; and we have eliminated from operating expenses all costs of getting the gas to the well head, which costs would not be incurred if the Company bought all of its gas at the well head at the prevailing field price.

Under what might be called the "Huley Method" the Company's witness Huley included in his account, "developed leaseholds," all producing leaseholds and all proven or semi-proven parts of non-producing leaseholds (and including Petrolia District leaseholds). Mr. Huley evaluated these leaseholds on the basis of the present (i. e. December

31, 1931) worth of the future estimated net income from these leaseholds based upon the application of predicted future well head prices to predicted future withdrawals. In arriving at the present worth of the future income from the leaseholds, Mr. Huley used an eight per cent compound discount factor. In arriving at the estimated future net income, Mr. Huley deducted certain production expenses necessary to get the gas to the well head but failed to deduct the more considerable production expenses represented by dry hole and cancelled and surrendered lease expense. The value of the developed leaseholds as found by Mr. Huley was \$3,557,471.00 (Ex. 6, p. 5). This value is based upon the prediction that the present field price for gas in the field with the largest reserves (Wheeler County District) will be trebled by the year 1944 (Ex. 9, p. 7) and that the 1931 withdrawals will be quadrupled by 1939 (Ex. 8, p. 266). The estimated 1932 withdrawals (9,613,417 M cu. ft., Ex. 8, p. 266) were 87 per cent in excess of the actual 1932 withdrawals (5,143,270 M cu. ft., Tr. p. 11216 and p. 11217). Mr. J. A. Phillips, the independent auditor retained by the State in this investigation, found a value of \$379,473.00 (Tr. p. 7956) for the gas reserves on these same leaseholds, using the identical method and estimated production used by Mr. Huley, but (1) applying the prevailing field well head prices of gas to the future withdrawals predicted by the Company, [fol. 19-49] (2) making certain uncontroverted corrections to the well operating expenses, and (3) deducting from future estimated income the correct amount of gross production tax and federal income tax. Testimony was introduced by the Lone Star Gas Company to the effect that the other gas transmission companies were paying more for gas in other districts of the Panhandle of Texas than the Lone Star Gas Company was paying in the Wheeler County District. There was no testimony, however, which would indicate that the future well head price would show an increase in any of the Panhandle districts. We are of the opinion that Mr. Phillips' computations show more accurately the present worth of the estimated future withdrawals of gas from the proven leaseholds than do the figures of Mr. Huley. One very considerable item of expense which is incurred in the operation of wells, and which was considered by neither Mr. Huley nor Mr. Phillips is the depreciation of gas well equipment and construction. It is true that the appraised value of gas well equipment and construction was deducted

by Mr. Hulcy from the total present worth of the leaseholds which embraced gas well construction and equipment, such that, when gas well construction and equipment were set up separately in the Company's appraisal, there was no duplication. This procedure served to reduce the depletion charges which are computed on the value of the leaseholds, but inasmuch as the reduction in depletion charges was not nearly so large an amount as the depreciation on gas well construction and equipment, the net result was to eliminate from the future well operating costs most of the depreciation on gas well equipment and construction. Both Mr. Hulcy's and Mr. Phillips' computations of present worth of future leasehold earnings would be considerably reduced were this depreciation deducted from the future leasehold earnings. Both computations would be very materially reduced if the actual 1932 production and the probable future actual production were used. The method used by Mr. Hulcy gives a highly speculative result at best, and were it a correct method of finding present worth of future leasehold earnings, its application would have the effect of basing present gas rates on the capitalized value of the increased consumption of future users and on an assumed increase in the future cost of gas in the field. Present users should pay for the gas they actually use based upon present field prices for gas, and not upon the basis of the speculative present worth to the Company of future increased withdrawals and future increase in the field price of gas. The only accurate application of a method such as Mr. Hulcy's, wherein the value of the leasehold is based on the field price of the gas at the well head, would be to consider the production of gas by the Lone Star Gas Company separately from the transmission of gas and to allow the production properties and operations the current field price for the gas which the production department actually produced (Method (3) above). Under such a method the production department or division [fol. 19-50] would receive at the well head exactly what the gas would cost if purchased from some other owner who would stand all production costs including dry hole expense and cancelled and surrendered lease expense. The Lone Star Gas Company bought 72.25 per cent of its 1931 gas requirements from other owners (Ex. 6, Vol. 9, p. 675), at the prevailing field prices which included compensation for dry holes, cancelled and surrendered leases, and all other production expenses.

Present Worth.—As used by us in this order the present worth of an item of property is the reproduction cost new less the actual accrued depreciation. While depreciation as carried on the Company's books is not a proper test, the depreciation, actually accrued, is a proper test. Actual accrued depreciation as determined by us includes not only observable physical deterioration of the surfaces of the items of property, but lessened life or usefulness due to certainty of ultimate removal or abandonment due to depletion of gas supply, obsolescence, inadequacy, other functional depreciation, and non-observable deterioration (such as that on the inside of pipe, fatigue of engine parts, etc., etc.), in fact anything reasonably to be considered as lessening the present worth of the property. Any condition which lessens present worth should be allowed in determining the accrued depreciation; conversely anything that has been properly allowed as part of accrued depreciation must be reflected in present worth. The observable deterioration is only a part of the depreciation which is constantly accruing. Fortunately the Company has made available complete records of mortalities from all causes for the major items of property and these records have made possible a much more accurate determination of the accrued depreciation from all causes than would be possible from surface observation.

By reason of the method whereby we have determined annual depreciation it has been unnecessary for us to make a specific finding or determination of either the accrued depreciation and/or present worth except for the items: Repair and Cleanout Tools and Equipment, and Automotive and Construction Equipment, as to which specific findings have been made. The Company handles depreciation charges on Repair and Cleanout Tools and on Automotive and Construction Equipment in a manner different from that which it handles depreciation charges on other items of physical property. Depreciation on Repair and Cleanout Tools and on Automotive and Construction Equipment is charged out currently to the different operating expense accounts or capitalized on new construction work. The charges are adjusted from time to time so as to reflect the actual depreciation. If the charges to expenses and new construction have been accurately made the depreciated book value is the present worth. If the charges have been too low, the book value is too high and expenses and new construction would be correspondingly understated. On the other hand, if the

charges have been too high, the book value is too low and [fol. 19-51] expenses and new construction would be overstated. The accrued depreciation on Automotive and Construction Equipment was \$324,686.44 as of December 31, 1931. The depreciation charged to auto operations during 1931 was \$117,423.90 (Ex. 23) or approximately 36 per cent of the December 31, 1931, accrued depreciation. The present worth (book value) of the Automotive and Construction Equipment which we are allowing is \$80,931.80 (\$79,320.73, Ex. 29, p. 11; \$1,611.07, Ex. 36, p. 17) as of December 31, 1931. The present worth (book value) of Repair and Cleanout Tools was \$15,764.33 as of December 31, 1931 (Ex. 29, p. 10). The Repair and Cleanout Tools are inventoried periodically and the book values adjusted accordingly.

For all other items of property we have adopted a "sinking fund" basis for calculating annual depreciation. On this basis the "sinking fund" is the mathematically correct measure of accrued depreciation for any item of property. The "sinking fund" (accrued depreciation) earns the same rate of return as the present worth (a minimum of 6 per cent) and the earnings are credited to the "sinking fund." The rate of return is therefore applied to the present worth plus the accrued depreciation (sinking fund), or in other words, to the undepreciated rate base. The phrases "sinking fund" and "amortization fund," as used by us will be understood to mean money derived from current revenues of the Company, and, together with the interest earned thereon, "ear-marked" to anticipate and liquidate the liabilities to be incurred for renewals, replacements or the return of invested capital (return on the investment being assumed to be currently cared for out of current revenues), as, if and when these necessities ripen.

The present worth determinations which we have therefore found necessary to make are as follows:

Repair and Cleanout Tools and Equipment	\$15,764.33
Automotive and Construction Equipment	80,931.80

Annual Depreciation.—The witness Connor submitted for the Company very complete records of mortalities from all causes for the major items of property, viz., pipe and compressors. Complete data were also available with reference to the maintenance policies of the Company. The Company witness Connor made his annual depreciation computations

for Main Transmission Lines on what is known as a "straight line" basis, using a combination of both the "straight line" and the "sinking fund" methods, or the "sinking fund" method alone for most of the other items. The witness Freese used a "sinking fund" method throughout in making his annual depreciation computations.

A comparison of the results obtained under the "straight line" method and the "sinking fund" method is to be found in a table on p. 1477, Vol. LXXXI, Transactions of the American Society of Civil Engineers as part of the Final Report of the Special Committee to Formulate Principles [fol. 19-52] and Methods for the Valuation of Railroad Property and Other Public Utilities. This table is as follows:

Comparison of Combined Annual Depreciation and Return Upon a \$100 Property Unit of 20-Year Life, Under Different Methods of Providing for Depreciation. Assumed Rate 5 Per Cent.

Year	Straight Line Method			Sinking Fund Method		
	Depreciation	Return	Total	Depreciation	Return	Total
1.....	\$5.00	\$5.00	\$10.00	\$3.02	\$5.00	\$8.02
2.....	5.00	4.75	9.75	3.02	5.00	8.02
3.....	5.00	4.50	9.50	3.02	5.00	8.02
4.....	5.00	4.25	9.25	3.02	5.00	8.02
5.....	5.00	4.00	9.00	3.02	5.00	8.02
6.....	5.00	3.75	8.75	3.02	5.00	8.02
7.....	5.00	3.50	8.50	3.02	5.00	8.02
8.....	5.00	3.25	8.25	3.02	5.00	8.02
9.....	5.00	3.00	8.00	3.02	5.00	8.02
10.....	5.00	2.75	7.75	3.02	5.00	8.02
11.....	5.00	2.50	7.50	3.02	5.00	8.02
12.....	5.00	2.25	7.25	3.02	5.00	8.02
13.....	5.00	2.00	7.00	3.02	5.00	8.02
14.....	5.00	1.75	6.75	3.02	5.00	8.02
15.....	5.00	1.50	6.50	3.02	5.00	8.02
16.....	5.00	1.25	6.25	3.02	5.00	8.02
17.....	5.00	1.00	6.00	3.02	5.00	8.02
18.....	5.00	0.75	5.75	3.02	5.00	8.02
19.....	5.00	0.50	5.50	3.02	5.00	8.02
20.....	5.00	0.25	5.25	3.02	5.00	8.02

As shown by the above table and under the assumed conditions, the total Depreciation and Return during the first year is almost twice what it is during the twentieth year by the straight line method, whereas by the sinking fund method the total Depreciation and Return are the same from year to year. It can be readily seen that a gas utility under regulation would have to charge a great deal more per thousand feet of gas during the first few years of its life than during the last few years if the straight line method of computing depreciation were used, whereas if the sinking fund method were used the charges would be

uniform from year to year. We much prefer a sinking fund method of computing depreciation to the straight line method by reason of the uniformity from year to year in the total of depreciation charges and return.

Since, under the sinking fund method, an undepreciated rate base is used, it is unnecessary to make a determination of present worth. This eliminates the necessity of an estimate of per cent condition, which obviously is largely guess-work based on surface indications and which fails to take into consideration the other considerable factors which may lessen or affect present worth. We deem it much more satisfactory to make findings on the basis of the very excellent [fol. 19-53] lent mortality data available and upon which accurate determinations can be made by use of the sinking fund method.

The Company witness Connor's annual depreciation determinations are predicated on a rate of replacements equal to the estimated average replacements during an arbitrary period of years following December 31, 1931. On the most material item, Transmission Lines, the replacements reach a peak during the assumed period taken, the average rate used being considerably in excess of his calculated 1932 replacements. Mr. Connor gave no consideration whatever to the depreciation reserves which should have been (and were) built up during the early life of the items of property when replacements were at a minimum. The Company had actually built up a depreciation reserve of \$12,244,583.68 as of December 31, 1931 (Ex. 26, p. 92). The depreciation charges under Mr. Connor's set-up are such that it would not be necessary to call on this reserve for a cent, nor would it have been necessary to have accumulated any reserve at all, thus neutralizing entirely the purpose for which the reserve had been accumulated.

Mr. Freese, instead of taking any particular future period, computed his depreciation charges on the basis of complete life cycles of the different items of property such that the rate was uniform from the beginning to the end of the life of a unit of property. We are of the opinion that the depreciation rate for a unit of property should be uniform throughout its life cycle. Under the method used by Mr. Connor the present rate payer would be required to bear the entire burden of retiring units of property which served not him but former rate payers who made use of the services furnished by the Company, and who are shown to have provided

a fund for the retirement of the units which were used in their service. It must be assumed that the Company has made adequate depreciation charges in the past and that a depreciation reserve in the correct amount has been established to be ultimately applied to the replacement or retirement of the investment. If the Company has provided depreciation reserves in excess of the correct amount, such excess has been at the expense of past profits. If the Company has failed to make provision for depreciation reserves in the correct amount, it has paid out in profits the amount of the deficiency. In any event the Company is not entitled to force present or future rate payers to make good inadequate provisions for retirements. In the Knoxville Water Case (212 U. S. 13), Mr. Justice Moody for the United States Supreme Court said:

“The Company is not bound to see its property gradually waste, without making provision out of earnings for its replacement. It is entitled to see that from earnings the value of the property invested is kept unimpaired, so that at the end of any given term of years the original investment remains as it was at the beginning. It is not only the right of [fol. 19-54] the Company to make such a provision but it is the duty to its bond and stockholders, and in the case of a public service corporation at least, its plain duty to the public.”

We have found annual depreciation rates computed on a sinking fund basis sufficient to make all replacements, to take care of all other proper charges to the depreciation reserve, and to fully amortize the property over a reasonable length of time. In answer to the question by Counsel for the Company, “What is the usual per cent factor used in connection with accruals of reserve on a sinking fund basis?”, the Company witness Connor answered, “Whatever rate of interest would be required to meet certain specifications, with reference to the security, which would mean absolute safety of principal, absolute guarantee of interest payment, and absolute guarantee of instant liquidation without discount.” (Tr. p. 10177.)

We have assumed that the sinking fund be invested as an integral part of the property itself. In so far as a sinking fund required for replacements and amortization of this property is concerned, there could be no more absolute

safety of principal than an investment in the property itself. As a matter of fact, as shown by the record, the Company's depreciation reserve has been invested in the property itself and in substantially the correct amount indicated by the sinking fund calculations. The question arises as to how future sinking fund accruals may be safely invested in case the Company should make no further additions to its property. In the first place that part of the sinking fund required for future replacements approximates the maximum required by the property and there will be no substantial increase in that part of the fund. Secondly, the accruals to the other part of the fund which is for the purpose of amortizing integral parts of the property at the end of the life of such parts may be taken out of the Company as the owners see fit and eventually must be completely taken out. Furthermore, as long as the Company owes some \$19,000,000 or any part thereof, there will be no difficulty in finding an "absolutely safe" investment for the sinking fund accruals.

The second of Mr. Connor's specifications is "absolute guarantee of interest payment." As long as the Company receives a return on an undepreciated rate base, equal to the present worth of the property plus the accrued depreciation computed on a sinking fund basis, there can be no question as to there being an "absolute guarantee of interest payment" to the extent of the return allowed and earned.

The third of Mr. Connor's specifications is "absolute guarantee of instant liquidation without discount." The fund needs to be liquid only to the extent of current requirements for retirements, replacements, etc., chargeable to the depreciation reserve or sinking fund. There is no question of an "absolute guarantee of instant liquidation without discount" to the extent of the requirements, inasmuch as the total annual accruals to the sinking fund are always in excess of the annual requirements for retirements or replacements, [fol. 19-55] this excess of total annual accruals over annual requirements accumulating to 100 per cent of the property unit at the end of its life cycle, unless some of the accumulation currently be taken out of the Company by the owners. An examination of the depreciation sinking fund table to be found in the discussion of annual depreciation on transmission line equipment will verify this statement.

Mr. Connor uses to some extent a 7 per cent sinking fund method in computing his annual depreciation for each of the items of physical property to which he has applied annual

depreciation as set forth in his Exhibit 21, except Gathering System Rights of Way, Furniture and Fixtures, Shop Equipment, and Telephone Equipment. He also uses to a greater or less extent a straight line method for practically every item of property. Mr. Freese consistently uses a 6 per cent sinking fund method.

Where an undepreciated rate base is adopted in connection with the sinking fund method of determining depreciation, interest accruals to the sinking fund are at the same rate as the rate of return allowed and received. We find a minimum fair rate of return to be six per cent. Interest accruals to the depreciation sinking fund have, therefore, been computed at a rate of six per cent. On this basis we have found the annual depreciation rates necessary to make all replacements not being charged to operating expenses, to meet all other proper charges to the depreciation reserve, and to amortize during their life cycles the entire loss upon retirement of the items of property to which annual depreciation is applicable.

Gas Wells.—Gas well replacements are practically nil according to the Company witness Connor, who states “In the case of Gas Well Construction and Equipment * * * there will be little or no replacements during the service life of any given well” (Ex. 18, p. 95). Mr. Connor computes the loss on abandonment of a gas well to be 84.5 per cent of the installed cost without taking into consideration the depreciation on salvaged material and decline in per cent condition. Mr. Connor amortizes the 84.5 per cent loss on a seven per cent basis over a 6.25 year weighted average life and makes separate allowances for depreciation and for decline in per cent of new condition (Ex. 18, p. 95). His computations presuppose the use of a depreciated rate base. We find the total loss by abandonment including depreciation on salvaged material and decline in per cent condition to be 89.65 per cent (Ex. 29, p. 15, Ex. 18, pp. 95 and 97). The weighted total life expectancy of the wells connected to the system as of December 31, 1931, was 12.95 years (Ex. 18, p. 83). Mr. Connor states on p. 96 of Ex. 18 that “future drilling will no doubt be concentrated in the areas in which the producing wells have shown the longest life.” The Company’s Exhibits 8 and 9 show the proposed development of the proven gas reserves, the predicted average life

of the present wells and of the future wells being some seventeen years. We find the weighted average life of the Lone Star Gas Company was wells to be not less than thirty [fol. 19-56] teen years. 4.748 per cent per annum will amortize the total loss upon abandonment of gas wells of 89.65 per cent in 13 years on a 6 per cent interest accrual basis, and we are adopting 4.748 per cent as the proper annual depreciation figure for gas wells. Our method of arriving at this figure presupposes an undepreciated rate base. Although we have followed Mr. Connor's method to a large degree, the following differences in application should be noted: (1) Mr. Connor used an amortization or sinking fund method to care for the major part of the loss upon abandonment or removal of gas wells, viz., 84.5 per cent, and uses another method to care for the minor losses; we have used the amortization or sinking fund method to take care of the entire loss upon removal or abandonment of 89.65 per cent; (2) Mr. Connor accrues interest on the sinking fund at a rate of 7 per cent per annum; we have used 6 per cent; (3) Mr. Connor presupposes a depreciated rate base; we are using an undepreciated rate base; and (4) Mr. Connor assumed a 6.25 year weighted average life; we have adopted a 13-year weighted average life for gas wells. Mr. Connor's basic assumption in arriving at his estimated life of wells was "that the future wells drilled will be in the ratio of one to three for wells having a service life of two and one-half years and a service life of twelve and one-half years" (Ex. 18, p. 84). He erroneously deduces a 6.25 year weighted average life of wells from this basic assumption rather than the correct weighted average life of 10 years, which should be deduced from his basic assumption. However, there was no reason to make any such assumption in the light of the information as to a probable 12.95 year weighted average life for the wells connected to the system as of December 31, 1931, based upon exact measurements of pressure declines (Ex. 18, p. 83). Neither the amortization rate arrived at by Mr. Connor nor the rate arrived at by us would be precisely correct unless each well had the exact weighted average life assumed; however both will be substantially correct if the heavier mortalities fall near the weighted average age, which is in accordance with the actual experience. In view of the fact that future wells drilled probably will have a weighted average life in excess of 13

years, we feel that an annual depreciation percentage of not more than 4.748 for gas wells should be used.

Other Production System Structures.—We are adopting an annual rate for current replacements of 2.0% as suggested by Mr. Connor (Ex. 18, p. 113). Mr. Connor amortizes 100% in 12 years on the basis of 7% interest accruals to the sinking fund (Ex. 18, p. 113). Other Production System Structures consist in the main of cottages on producing leaseholds and in general should have an average life greater than that of the individual wells. We have, therefore, amortized the entire 100% over a period of 13 years. We have used a 6% interest rate for sinking fund accruals instead of the 7% used by Mr. Connor. An annual rate of 5.296 per cent will amortize 100% in 13 years on a 6% interest accrual basis. Mr. Connor makes an allowance for annual decline in per cent condition and presupposes a [fol. 19-57] depreciated rate base; we have used an undepreciated rate base and make no allowance for decline in per cent of new condition. We, therefore, find a total of 7.296 per cent per annum annual depreciation rate for Other Production System Structures.

Gathering System Rights of Way.—These rights of way have an average life substantially the same as the individual wells and are worthless when the lines to the wells are removed. We are, therefore, allowing an annual depreciation rate of 5.296 per cent, which is sufficient to amortize 100% in 13 years on a 6% interest accrual basis.

Field Measuring Station Structures.—Current replacements on Field Measuring Station Structures are charged to operating expenses by the Company. The year 1931 was no exception in this particular. The average life of a field measuring station in one place, i. e., before being removed to another location, is the same as for the average gas well. We have found this average life to be 13 years. Mr. Connor estimated a loss of 25% upon the first removal and a loss of 100% at the second removal (or abandonment) (Ex. 18, p. 113). We have assumed a complete loss of 100% upon the first removal at the end of 13 years. An annual rate of 5.296% will amortize 100% in 13 years on a 6% sinking fund basis, and we find 5.296% to be the annual rate of depreciation for Field Measuring Station Structures. (Mr. Connor used a 7% sinking fund basis.)

Field Measuring Station Equipment.—Mr. Connor based his computations for Field Measuring Station Equipment on the same factors which he found for Field Measuring Station Structures and arrived at the same result (Ex. 18, p. 113). We find that current replacements of Field Measuring Station Equipment are charged to operating expenses and that this was true for the year 1931. We find the average life before removal to be the same as the average life of gas wells, i. e., not less than 13 years. Mr. Connor assumes a loss of 25% upon the first removal at the end of six years and a 100% loss upon the second removal at the end of 12 years. We find with Mr. Freese a loss of 70% upon the first removal at the end of 13 years (Ex. 29, p. 19). An annual rate of 3.707% will amortize 70% in 13 years on a 6% sinking fund basis, and we find this annual rate for the depreciation on Field Measuring Station Equipment.

Field Line Equipment.—Mr. Connor's annual depreciation rate of 14.34 per cent for Field Line Equipment is made up as follows: 10.4 per cent computed on a 7 per cent sinking fund basis to take care of removals; approximately 3 per cent computed as an average of future replacements to take care of retirements; 1 per cent computed on a straight line basis to take care of decline in per cent condition. The loss upon removal is 77.12 per cent if no consideration is given to the deterioration of material (Ex. 18, p. 85). The [fol. 19-58] total loss, taking into consideration the condition of the salvaged material, is 88.56 per cent (Ex. 29, p. 20). Mr. Connor arrives at his 10.4 per cent by amortizing the 77.12 per cent loss over a period of 6.25 years on a 7 per cent sinking fund basis. The life of well lines (Field Line Equipment) will approximate that of gas wells. Some lines may serve several wells and will have a longer life than the individual wells; however, this factor is offset to some extent by the fact that well lines are sometimes rearranged before the depletion of the wells served. We therefore have found the weighted average life of gas wells to be not less than 13 years (see also Ex. 18, p. 83) instead of the incorrectly computed 6.25 years found by Mr. Connor. An annual rate of 4.690 per cent will amortize the total loss upon removal of 88.56 per cent in 13 years on a 6 per cent sinking fund basis. This total loss includes the loss due to decline in per cent condition of the Field Line Equipment, it having been conservatively assumed that this loss in per cent condi-

tion would not exceed 50 per cent (Ex. 29, p. 20). The remaining factor to be discussed is the matter of retirements or replacements. Mr. Connor took the average of his estimated future replacements, beginning with .59 per cent in 1933 and ending with 5.85 per cent in 1955, with a peak of 6.04 per cent in 1953 and averaging for the arbitrary period selected approximately 3 per cent (Ex. 18, p. 87), which figure was adopted by Mr. Connor. Mr. Connor makes no allowance for interest on the credit balances which would obtain in this retirement or replacement fund. Under Mr. Connor's method the present or future user of service would pay a rate sufficient to retire or replace property used in the furnishing of service to past users. The annual rate of depreciation to take care of replacements should be based upon the depreciation currently taking place and not upon retirements or replacements of property used up in the service of past consumers. Furthermore, this annual depreciation rate to take care of replacements should be uniform over the life cycle of the unit of property being considered. The total loss of 88.50 per cent upon removal of a well line (Field Line Equipment) is the loss which would take place on pipe which was new at the beginning of the 13-year period; if the pipe were installed second-hand the total loss would be substantially less. The replacements should, therefore, be computed on the basis of the first 13 years of new pipe. If the salvage has been correctly assumed in arriving at the total loss of 88.50 per cent for new pipe, computations based on the use of second-hand pipe should give the same results (i. e., amortization of total loss upon removal rate plus replacement rate should be the same in either case). The replacement rates for the first 13 years of well lines as found by Connor, and as found by Freese were as follows:

[fol. 19-59]

Year	Freese (Ex. 36, p. 23)	Connor (Ex. 18, p. 48)
1	.02	.00
2	.05	.04
3	.09	.05
4	.15	.06
5	.22	.07
6	.31	.10
7	.40	.15
8	.51	.20

Year	Freese (Ex. 36, p. 23)	Connor (Ex. 18, p. 48)
9.....	.63	.30
10.....	.75	.40
11.....	.88	.55
12.....	1.01	.71
13.....	1.14	.91

We are adopting the rate of replacements set forth by Mr. Freese, which in this case is a considerably higher rate than the one used by Mr. Connor. A comparison of the rates of replacements for steel pipe used by Messrs. Connor and Freese will be discussed later under the heading Transmission Line Equipment. An annual rate of .395 per cent will make the replacements set forth above under the Freese column on a 6 per cent sinking fund basis. We therefore find a total annual depreciation rate of 5.085 per cent (4.690 per cent for amortization plus .395 per cent for replacements). This rate will make all replacements and amortize the total loss upon removal of the equipment.

Transmission System Measuring Station Land.—We find and allow an annual rate of .509 per cent for Transmission System Measuring Station Land (Ex. 29, p. 21). This annual rate is sufficient to cover annual lease accruals. Mr. Connor makes no allowance for this item.

Other Transmission System Leaseholds.—We find an annual rate of 2.070 per cent for Other Transmission System Leaseholds (Ex. 29, p. 22). This annual rate is sufficient to cover annual lease accruals. Mr. Connor makes no allowance for this item.

Transmission System Rights of Way.—We find an annual rate of .344 per cent for Transmission System Rights of Way. This annual rate will amortize 100 per cent in 50 years on a 6 per cent sinking fund basis. Transmission System Rights of Way are a sizeable item, amounting to more than \$1,000,000. Mr. Connor makes no annual allowance for this item.

Transmission System Measuring Station Structures.—Current replacements of Transmission System Measuring Station Structures by the Company, were and are being charged to operating expenses or to the depreciation reserve for Transmission System Measuring Station Equipment. The allowance for current replacements made under

Equipment is adequate to cover any retirements or replacements to structures not being charged to operating expenses. Mr. Connor amortizes 100 per cent over 25 years on a 7 per cent sinking fund basis (1.6 per cent, Ex. 18, p. 114). We find an annual rate of 1.823 per cent, this being the annual rate necessary to amortize 100 per cent over 25 years on a 6 per cent sinking fund basis.

Other Transmission System Structures.—We find an annual rate of 1.823% for Other Transmission System Structures, the basis for this rate being the same as for Transmission System Measuring Station Structures.

Transmission System Measuring Station Equipment.—Current replacements to Transmission System Measuring Station Equipment and Structures for the period 1927-1931 were as follows (Ex. 29, p. 25):

1927	\$2,888.63
1928	2,100.59
1929	7,548.19
1930	7,115.94
1931	3,577.98

In 1929 the Company began charging more replacements to depreciation reserves and less to operating expenses. We, therefore, have taken the average for the period 1929-1931 (6,080.70 per annum) which results in an average rate for replacements of 1.332% (Ex. 29, p. 25). Mr. Connor amortizes this item of property over a 25-year period on a 7% basis. This equipment is above ground, is well housed, and is kept well painted. If proper allowance for annual replacements has been made, we see no reason to believe that the life of this equipment would be less than the 40 years found by Mr. Freese. An annual amount of .646% will amortize 100%, in 40 years on the 6% sinking fund basis. We find a total annual rate of 1.978% (Replacements 1.332% plus Amortization .646%) for Transmission System Measuring Station Equipment.

Transmission Line Equipment.—The item Transmission Line Equipment is composed of (1) Main Lines, (2) Tap Lines, and (3) Gathering Lines. The same basic rate of replacements is applicable to each of these three divisions; this being true of the basic rate proposed by Mr. Connor and of the basic rate proposed by Mr. Freese. The replacement

rate proposed by Mr. Connor conforms to the mortality curve shown on p. 46 of Ex. 18. The replacement rate proposed by Mr. Freese conforms to the mortality curve shown on p. 47 of Ex. 29. Both curves are shown on p. 5 of Ex. 30. The application of Mr. Connor's mortality curve to the pipe in the Lone Star Gas Company system since the beginning in 1909 results in a total computed mortality of 333.14 miles of 3-inch equivalent pipe up to December 31, 1931 (Ex. 18, p. 25). The application of Mr. Freese's mortality curve results in calculated total mortalities of 353.51 miles of 3-inch equivalent pipe from 1909 to December 31, 1931 (Ex. [fol. 19-61] 29, p. 46). These calculated mortalities compare with the actual mortalities as found by Mr. Connor of 354.12 miles of 3-inch equivalent pipe (Ex. 18, p. 21). However, this latter figure (354.12 miles) includes the actual mortalities on a substantial amount of pipe, the life of which was not taken into consideration by either Mr. Connor or Mr. Freese. If this pipe had been taken into consideration, the calculated mortalities of both Mr. Connor and Mr. Freese would have exceeded the actual mortalities considerably. And vice versa, if only the actual mortalities occurring on the pipe considered by Messrs. Connor and Freese, in arriving at the calculated mortalities, had been determined, then the actual mortalities would have been substantially less than the calculated mortalities. Both curves are equally acceptable in so far as their adequacy to make all historical replacements up to December 31, 1931, is concerned. Mr. Connor's mortality curve results in an average life of steel pipe of 25 years, whereas Mr. Freese's curve results in a $33\frac{1}{2}$ -year average life. In arriving at his mortality curve and the resulting 25-year average life for steel pipe, Mr. Connor was largely influenced by a mortality curve which he had previously worked out for steel pipe in the Fort Worth Distribution System and which curve had a $20\frac{1}{2}$ -year average life. In fact, it can be fairly stated that the characteristics of Mr. Connor's 25-year average life mortality curve for steel pipe in the Lone Star Gas Company Transmission System were largely determined by the characteristics of the $20\frac{1}{2}$ -year average life mortality curve for steel pipe in the Fort Worth Distribution System. Yet Mr. Connor testified that the factors which affected the mortalities of pipe in a city distribution system were entirely different from those which affected mortalities in a trans-

mission system. He testified further that only some sixty per cent of the mortalities in the Fort Worth System had been caused by deterioration. It is common knowledge that the physical deterioration of pipe concentrated in an area some 10 or 12 miles square is not the same as would be encountered in a system scattered over distances of 10 or 12 hundred miles. The factor of deterioration due to electrolysis is only one of the factors which are different as between a distribution system and a transmission system. The average size of pipe in the Fort Worth distribution system is much less than the average size in the Lone Star transmission system. The total amount of steel pipe laid in the Fort Worth distribution system between 1909 and 1931 and upon which Mr. Connor based his study was only approximately 700 miles of 3-inch equivalent pipe (Tr. p. 10715). Lines B and C which were the first lines laid in the Lone Star Transmission System and which were laid in 1910 contained 646 miles of 3-inch equivalent pipe. Lines B and C are 16-inch lines and run from Dallas to Petrolia (near Wichita Falls) via Fort Worth, a distance of approximately 650,000 feet (125 miles). Some of the most severe soil conditions to be found on the whole Lone Star Gas Company System [fol. 19-62] are on those lines (Line B in Clay County). These, the oldest lines (laid in 1910) in the Lone Star Transmission System, were 21 years old as of December 31, 1931, have a total of 646 miles of 3-inch equivalent pipe (650,000 ft. of 16-inch), and had actually experienced mortalities from all causes of 57 miles (301,260 ft. of 3-inch equivalent pipe) up to December 31, 1931. The total mortalities in the 21 years, therefore, amounted to 9%. The estimated average life of pipe in these lines is 40 years plus (Tr. p. 10725). The total mileage in the Fort Worth Distribution System as of December 31, 1931, was 700 miles of 3-inch equivalent pipe laid from 1909 to 1931, inclusive, the oldest of which pipe was 22 years old. The Fort Worth curve which Mr. Connor followed so closely in determining his curve for the Lone Star System shows total mortalities at the end of 21 years of 55%, as compared with the actual mortalities of 9% experienced on Lines B and C. The Fort Worth curve shows an average life of 20½ years. The Connor curve is based upon a 25-year average life and shows total mortalities of 20% at the end of 21 years. The Freese curve is based upon a 33½-year average and shows total mortalities of 20% at

the end of 21 years. A tabulation of the above figures is as follows:

	Mortalities at End of 21 Years	Average Life of Pipe
Lines B and C Actual.....	9%	40 years plus
Freese Lone Star Mortality Curve	20%	33½ years
Connor Lone Star Mortality Curve	25%	25 years
Connor Fort Worth Mortality Curve	55%	20½ years

Of the above mortalities of 143,047 feet of 3-inch equivalent pipe on Line C up to December 31, 1931, 116,656 (Tr. 10719) feet were caused by the removal of the line in 1931 to accommodate the Dallas County Levee District work. 116,656 feet, or 80% of the mortalities would not have taken place on Line C up to December 31, 1931, except for this removal. Of the mortalities of 156,213 feet of 3-inch equivalent pipe credited to Line B, 67,930 feet or 43% evidently took place on an old Line B which was entirely removed to another location in 1917 (Ex. 19, p. 5, Ex. 18, pp. 20 and 21, Tr. p. 10717) and which mortalities should not have been charged against the present Line B. However, we have made no correction to the mortalities on Lines B and C and in arriving at the 9% total mortalities for 21 years the mortalities due to the 1931 removal of Line C and the 1915-1916 mortalities on the old Line B were included. We find that the average life of steel pipe in the Lone Star Gas Company transmission system is not less than 33½ years and are adopting for the purpose of this opinion the steel pipe mortality curve proposed by Mr. Freese. The results of the application of Mr. Connor's curve and of Mr. Freese's curve are compared graphically with the actual mortalities of steel pipe in the main lines of the Lone Star Gas Company system on p. 6 of Ex. 30. The total calculated mortalities as shown by both curves equal the total actual mortalities [fol. 19-63] through December 31, 1931. For the year 1932 the Connor curve shows a calculated prediction of mortalities of approximately 85 miles of 3-inch equivalent pipe; the Freese curve shows a calculated prediction of mortalities of approximately 61 miles for 1932; whereas the actual mortalities for 1932 were approximately six miles.

In arriving at his annual rate of depreciation, Mr. Connor took an average of his predicted retirements (mortalities) or replacements for the years 1933 to 1955 inclusive, the rates increasing from 1.28 per cent in 1933 to a peak of 5.53 per cent in 1951. Mr. Connor makes no allowance for the use of the several millions of dollars of reserve which would be built up for this item (main line pipe) during the next few years. Under Mr. Connor's set-up the current gas consumer would be paying the Company rates sufficient to retire (or replace) pipe used up in the service of past consumers and not used in the service of the consumer currently paying rates. We are of the opinion that the cost of retiring (or replacing) an item of property should be spread evenly over the life of the item of property. Mr. Connor makes no allowance for the amortization of the property. However, as is clearly shown in the following table for main line steel pipe, we are setting up an annual allowance which will not only make all retirements (or replacements) in accordance with the mortality curve for 33½ years average life pipe which we have adopted but will amortize 100 per cent of the total cost in 45 years. Interest on cumulative accruals in the reserve or sinking fund was computed at 6 per cent. This table shows all computations used in arriving at the annual rate of 1.70 per cent:

Year	Total Annual Replacements (Ex. 29, pp. 44 and 45) Per Cent	Annual Rate in Per Cent Re- quired to Make Replacements and Amortize 100%	Annual Accrual To Sink- ing Fund Per Cent	Interest At 6% On Sinking Fund Per Cent	Sinking Fund (Cumulative Accruals Plus Interest) Per Cent
1	.02	1.70	1.68	....	1.68
2	.05	1.70	1.65	.10	3.43
3	.09	1.70	1.61	.21	5.25
4	.15	1.70	1.55	.31	7.11
5	.22	1.70	1.48	.43	9.02
6	.31	1.70	1.39	.54	10.95
7	.40	1.70	1.30	.66	12.91
8	.51	1.70	1.19	.78	14.88
9	.63	1.70	1.07	.89	16.84
10	.75	1.70	.95	1.01	18.80
11	.88	1.70	.82	1.13	20.75
12	1.01	1.70	.69	1.24	22.68
13	1.14	1.70	.56	1.36	24.60
14	1.27	1.70	.43	1.48	26.51
15	1.39	1.70	.31	1.59	28.41
16	1.53	1.70	.17	1.70	30.28
17	1.65	1.70	.05	1.82	32.15
18	1.78	1.70	— .08	1.93	34.00
19	1.91	1.70	— .21	2.04	35.83

[fol. 19-64]

Year	Total Annual Replacements (Ex. 29, pp. 44 and 45) Per Cent	Annual Rate in Per Cent Required to Make Replacements and Amortize 100%	Annual Accrual To Sinking Fund Per Cent	Interest At 6% On Sinking Fund Plus Interest Per Cent	Sinking Fund (Cumulative Accruals) Per Cent
20	2.05	1.70	— .35	2.15	37.63
21	2.18	1.70	— .48	2.26	39.41
22	2.30	1.70	— .60	2.36	41.17
23	2.40	1.70	— .70	2.47	42.94
24	2.50	1.70	— .80	2.58	44.72
25	2.58	1.70	— .88	2.68	46.52
26	2.65	1.70	— .95	2.79	48.36
27	2.70	1.70	— 1.00	2.90	50.26
28	2.75	1.70	— 1.05	3.02	52.23
29	2.78	1.70	— 1.08	3.14	54.29
30	2.82	1.70	— 1.12	3.26	56.43
31	2.86	1.70	— 1.16	3.39	58.66
32	2.91	1.70	— 1.21	3.52	60.97
33	2.95	1.70	— 1.25	3.66	63.38
34	3.00	1.70	— 1.30	3.81	65.89
35	3.05	1.70	— 1.35	3.96	68.50
36	3.11	1.70	— 1.41	4.12	71.21
37	3.16	1.70	— 1.46	4.28	74.03
38	3.22	1.70	— 1.52	4.44	76.95
39	3.28	1.70	— 1.58	4.62	79.99
40	3.34	1.70	— 1.64	4.81	83.16
41	3.39	1.70	— 1.69	5.00	86.47
42	3.43	1.70	— 1.73	5.19	89.93
43	3.46	1.70	— 1.76	5.40	93.57
44	3.47	1.70	— 1.77	5.62	97.42
45	3.46	1.70	— 1.76	5.85	101.51

The other factors entering into the total annual depreciation rate for main lines, other than current retirements (replacements) and complete amortization both of which are compensated for by the 1.70% per annum rate above set forth, are the factors: major removals and rehabilitations. Major removals of main line pipe in the Lone Star Gas System have occurred during the Company's history, as follows:

1912	40 miles 3" equivalent pipe (Ex. 18, p. 21)
1917	486 miles 3" equivalent pipe (Ex. 18, p. 21)
1923	84 miles 3" equivalent pipe (Ex. 18, p. 21)
1928	49 miles 3" equivalent pipe (Ex. 18, p. 21)
Total	
1909-1931 inc. 659 miles 3" equivalent pipe (Ex. 18, p. 21)	

These early removals were occasioned by "growing pains," some 75% of all major removals having occurred in 1917 (Tr. p. 8319, also p. 7369). The average over the entire history has been 30 miles of 3" equivalent pipe per annum. We see no reason to believe that there will be

an increase over this average annual amount in the future. This average annual amount of 30 miles of 3" equivalent pipe is equal to .388% of the 3" equivalent pipe in place December 31, 1931 (7,713 miles). The net loss (average) in making a major removal amounts to 74.51% of the re-[fol. 19-65] production cost new (Ex. 18, p. 56). The annual average loss, therefore, amounts to .289% (74.51% of .388%) of the reproduction cost new of the pipe in place as of December 31, 1931.

Based upon the past experience of the Company, Mr. Connor computed an allowance of .15% per annum as the cost of making major rehabilitations (Ex. 18, p. 59). In arriving at the total past expenditures for major rehabilitations Mr. Connor included retirements (replacements) of pipe also included in his basic pipe mortalities (e. g., see Ex. 18, p. 39, Line H) and there is duplication to this extent. We are allowing the .15% per annum due to our inability to determine from the record the extent of the duplication.

In accordance with the foregoing we find the total annual depreciation rate of not more than 2.139% per annum, consisting of 1.700% for current retirements (replacements) and complete amortization; .289% for major removals; and, .150% for major rehabilitation.

Both the Witness Connor and the Witness Freese used their main line deductions as the basis for their annual depreciation rate for tap lines. The testimony indicates that the major rehabilitations took place on comparatively large sized dresser coupled main lines and not on tap lines. We find an annual depreciation rate of not more than 1.989% for tap lines (retirements and amortization 1.700%, major removals .289%).

The third division of Transmission Line Equipment (i. e. (1) Main Lines and (2) Tap Lines) is Gathering Lines (Field Lines). The witness Connor computes historical removals of gathering lines at 3.05% per annum (Ex. 18, p. 71) and then arbitrarily assumes that "It is reasonable to assume that the ultimate average rate required to provide for the cost of removals would not be less than 10 per cent per annum" (Ex. 18, p. 72). He then converts the 10% per annum on a straight line basis to 7.24% per annum on a 7% sinking fund basis, which when multiplied by the 74.5% loss upon removal, gives his resulting 5.40% per annum to take care of gathering line removals (Ex.

18, p. 72). We are not interested in speculation as to what the ultimate rate of removals may reach. We are interested in knowing as accurately as possible what the average rate of removals is over the life of the property. It is, therefore, necessary to determine what the average life of gathering lines is between removals, or from date of original installation to removal. We find that gathering lines will have an average life 50 per cent greater than the life of the individual wells and well lines served by the gathering lines (Connor 100%—Tr. p. 7686). We have heretofore found an average life of wells and well lines of not less than thirteen years, and hereby find an average life of gathering lines 50 per cent greater or $19\frac{1}{2}$ years. An annual rate of 2.77 per cent will made all replacements and amortize the 74.5 per cent loss upon removal of a gathering line on a 6 per cent sinking fund basis in $19\frac{1}{2}$ years. Major rehabilitations are nil on gathering lines. [fol. 19-66] We, therefore, find an annual depreciation rate of 2.77 per cent for Gathering Lines.

The annual rate for Transmission Line Equipment including Main, Tap, and Gathering Lines is 2.183 per cent computed as follows:

Main Lines 69.58% @ 2.139	1.488%
Tap Lines 18.91% @ 1.989 .....	.376
Gathering Lines 11.51% @ 2.770 .....	.319

Transmission Line Equipment 100.00% 2.183%

Mr. Connor makes an allowance for decline in per cent condition, the allowance for this item, Transmission Line Equipment, being 1 per cent per annum the same as he has allowed for the other items of property. As in the case of the other items of property, we have used the sinking fund method of computing the annual rate of depreciation which method requires the use of an undepreciated rate base. The rate which we have found for Transmission Line Equipment includes, as in the case of the other items of property, an allowance for decline in per cent condition to 0 per cent (or to the salvage value as the case may be); that is to say, we have allowed for complete amortization.

Compressing Stations.—The main compressor units constitute the major item of cost of a compressing station.

Mr. Connor allows for the annual depreciation on the main compressor units half by a 7 per cent sinking fund method and half by the straight line method, both methods being applied on the basis of a 31.25 year average life for main compressor units. The evidence indicates that not less than a 35 year average life for these main units should be used, and we so find. With this exception we are accepting Mr. Connor's allowances for the various component parts of compressing stations, all allowances being converted to a 6 per cent sinking fund basis in place of the partial 7 per cent sinking fund basis used by Mr. Connor. Each of the allowances is sufficient to include both current replacements and amortization except the allowance for main units which is not sufficient to include current replacements. The overall replacement rate experienced by the Company for replacements being charged to the depreciation reserve (and not to maintenance) is .828 per cent per annum (Ex. 29, p. 33). Although the replacement rate applicable to main compressing units is less than the overall rate, the evidence affords no basis for determining this difference and we have no other course than to accept the overall replacement rate of .828 per cent for application to the main compressor units.

The item Compressing Stations consists of Main Line Stations and Field Stations. The Main Line Stations boost main line pressures and are relatively permanent, whereas Field Stations are located in the various gas fields and are moved or abandoned upon the depletion of the gas fields [fol. 19-67] served. Mr. Connor made an allowance of 1.230 per cent on a 7 per cent sinking fund basis to take care of the removal and abandonment of Field Compressing Stations (Ex. 18, p. 125). Mr. Connor arrived at this figure on the basis of the historical experience of the Company but failed to take into consideration the life of a number of field stations prior to the time of their purchase by the Lone Star Gas Company. However, we are allowing the full amount suggested by Mr. Connor except that we have made a conversion to a 6 per cent sinking fund basis which increases the allowance to 1.360 per cent per annum (see Ex. 18, p. 125).

In accordance with the foregoing, we find an annual rate

of depreciation for Compressing Stations of 3.376 per cent per annum computed as follows:

Main Line Stations:

Current Replacements to Main Compressor Units	
47.37% of .828% .....	.392%
Amortization and Other Replacements	2.179%
Total Amortization and Replacements	2.571%

Field Stations:

Current Replacements to Main Compressor Units	
49.93% of .828% .....	.413%
Amortization and Other Replacements	2.013%
Removals and Abandonments	1.360%
Total Amortization and Replacements	3.786%

Combined Main Line and Field Stations:

Main Line Stations 33.72% @ 2.571% .....	.867%
Field Stations 66.28% @ 3.786%	2.509%
Total Annual Rate	3.376%

General Office Structure.—Mr. Connor amortizes the General Office Structure over a period of 40 years on a 7 per cent sinking fund basis resulting in a figure of .5 per cent (Ex. 18, p. 150). An annuity of .646 per cent is necessary on a 6 per cent sinking fund basis. Alterations, repairs, etc., charged to the depreciation reserve and not to maintenance amount to .750 per cent per annum (Ex. 29, p. 34). We, therefore, find a total annual rate of 1.396 per cent for the General Office Structure.

Other General Structures.—Mr. Connor amortizes Other General Structures over a period of 25 years on a 7 per cent sinking fund basis resulting in an annuity of 1.58 per cent (Ex. 18, p. 150). An annuity of 1.823 per cent is necessary on a 6 per cent sinking fund basis. Alterations, repairs, current renewals, etc., are charged to Operating Expenses. We find an annual rate of 1.823 per cent.

[fol. 19-68] **General Office Furniture and Fixtures and Other General Furniture and Fixtures.**—We have adopted the allowances suggested by Mr. Connor and have con-

verted them to a 6 per cent sinking fund basis, resulting in an annual rate of 8.219 per cent.

General Shop Equipment.—Repairs and Replacements to General Shop Equipment are charged to operating expenses. We are amortizing this item over a period of 15 years on a 6 per cent sinking fund basis resulting in an annual rate of 4.296 per cent.

General Telephone System.—Practically all repairs and replacements to the General Telephone System are charged to operating expenses. However, there is evidence indicating that approximately \$4,500.00 may have been charged to the depreciation reserves for some cause during the period 1929-1931, an average of \$1,500 per annum. We, therefore, are allowing .402 per cent per annum for repairs and replacements not ordinarily charged to operating expenses. An annuity of .646 per cent will amortize 100 per cent in 40 years on a 6 per cent sinking fund basis. We find a total annual rate of 1.048 per cent per annum for General Telephone System.

Non-Physical Property (Except Working Capital).—We find the weighted life of the property as a whole to be not less than 50 years. An annuity of .344 per cent will amortize 100 per cent on a 6 per cent sinking fund basis over a period of 50 years. We are allowing an annual rate of .344 per cent for all General Overheads, such that they will be amortized over the life of the property.

Annual Depreciation Summary.—In accordance with the foregoing we have found annual depreciation rates necessary to make all replacements not being charged to operating expenses, to meet all other proper charges to the depreciation reserve, and to amortize during its life cycle the entire loss upon retirement of the items of property, to be as follows for the items to which annual depreciation is applicable:

Item	Current Replacements, Etc.	Amortization	Total
Gas Wells.....	.....	4.748	4.748
Other Production System Structures.....	2.000	5.296	7.296
Gathering System Rights of Way.....	.....	5.296	5.296
Field Measuring Station Structures.....	Op. Exp.	5.296	5.296
Field Measuring Station Equipment.....	Op. Exp.	3.707	3.707
Field Line Equipment.....	.395	4.690	5.085
Transmission System Measuring Station Land.....	.509	.....	.509

Item	Current Replacements, Etc.	Amortization	Total
Other Transmission System Leaseholds...	2.070	.....	2.070
Transmission System Rights of Way....	.....	.344	.344
Transmission System Measuring Station Structures.....	Op. Exp.	1.823	1.823
Transmission System Measuring Station Equipment.....	1.332	.646	1.978
[fol. 19-69]			
Other Transmission System Structures...	Op. Exp.	1.823	1.823
Transmission Line Equipment.....	2.183		2.183
Compressing Stations.....	3.376		3.376
General Office Building.....	.750	.646	1.396
Other General Structures.....	Op. Exp.	1.823	1.823
General Office Furniture and Fixtures...	.....	8.219	8.219
Other General Furniture and Fixtures...	.....	8.219	8.219
General Shop Equipment.....	Op. Exp.	4.296	4.296
General Telephone System.....	.402	.646	1.048
Administration and Legal Expense, Engi- neering and Supervision During Con- struction.....	.....	.344	.344
Taxes During Construction.....	.....	.344	.344
Interest During Construction.....	.....	.344	.344
Preliminary and Organization Expense...	.....	.344	.344

Application of Annual Depreciation Rates. The annual depreciation rates found above are applied to the Reproduction Cost New of the various items of property to which annual depreciation should be applied, as follows:

Depreciable Item	Reproduction Cost New	Annual Rate	Annual Amount
Gas Wells.....	\$2,044,318.76	4.748	\$97,064.25
Other Production System Structures....	14,313.70	7.296	1,044.33
Gathering System Rights of Way.....	10,062.53	5.296	532.91
Field Measuring Station Structures.....	37,308.57	5.296	1,975.86
Field Measuring Station Equipment....	142,558.62	3.707	5,284.65
Field Line Equipment.....	847,010.72	5.085	43,070.50
Transmission System Measuring Station Land.....	78,944.10	.509	401.83
Other Transmission System Leaseholds..	3,463.71	2.070	71.70
Transmission System Rights of Way....	1,007,433.38	.344	3,465.57
Transmission System Measuring Station Structures.....	172,676.20	1.823	3,147.89
Other Transmission System Structures..	130,661.27	1.823	2,381.95
Transmission System Measuring Station Equipment.....	456,621.63	1.978	9,031.98
Transmission Line Equipment.....	26,932,811.12	2.183	587,943.27
Compressing Stations.....	4,894,617.14	3.376	165,242.27
General Office Structure.....	333,535.29	1.396	4,656.15
Other General Structures.....	59,716.19	1.823	1,088.63
General Office Furniture and Fixtures..	204,520.67	8.219	16,809.55
Other General Furniture and Fixtures..	10,967.71	8.219	901.44
General Shop Equipment.....	103,756.02	4.296	4,457.36
General Telephone System.....	373,591.15	1.048	3,915.24
Administration and Legal Expense, Engi- neering and Supervision During Con- struction.....	2,637,264.19	.344	9,072.19
Taxes During Construction.....	9,681.29	.344	33.30
Interest During Construction.....	1,650,467.52	.344	5,677.61
Preliminary and Organization Expense..	231,555.30	.344	796.55
Total.....	\$42,387,856.78	2.284	\$968,066.98

[fol. 19-70] Depletion—1931.—Both the witness Connor and the witness Freese found a unit depletion charge by dividing the “value” or present worth of proven leaseholds by the amount of gas underlying the proven leaseholds. We find the fair value, for the purpose of computing depletion of the proven leaseholds to be not more than \$1,308,978.34 (\$1,266,821.78, Ex. 29, p. 39; \$42,156.56, Ex. 36, p. 17). This is the actual cost to the Company of Developed Leaseholds (exclusive of Petrolia Leaseholds) depleted to December 31, 1931, plus the actual cost to the Company of all tested or proven acreage. The amount of gas underlying this proven acreage as of December 31, 1931, was 412,400,855 M cu. ft. (Ex. 29, p. 39—Ex. 8, p. 4). We find a unit depletion charge of \$.003174 per M cu. ft. (\$1,308,978.34 divided by 412,400,855). The amount of gas produced by the Company (exclusive of Petrolia) and taken from the leaseholds evaluated herein was 4,924,844 M cu. ft. during the year 1931 (Tr. pp. 8496 and 8497). We, therefore, find depletion charges for the year 1931 to be \$15,631.45 (4,924,844 M cu. ft. @ \$.003174).

Amount Available for Return and Federal Income Tax—1931.—We have heretofore found the amount available for depreciation, depletion, return, and Federal income tax to be \$5,127,055.18 for the year 1931. By deducting the Annual Depreciation of \$968,066.98, we find \$4,158,988.20 as the amount available for depletion, return, and Federal income tax for the year 1931. By deducting the 1931 Depletion Charges of \$15,631.45, we find \$4,143,356.75 as the amount available for return and Federal income tax for the year 1931.

Rate Base—December 31, 1931.—We are adopting as part of the rate bases the undepreciated Reproduction Cost New found by us for all items of property, the depreciation on which has been calculated on a sinking fund basis, and also all non-depreciable land items. These items consist of the entire property except (1) Leaseholds, (2) Repair and Cleanout Tools and Equipment, and (3) Automotive and Construction Equipment. We have heretofore found for Leaseholds a fair value, for inclusion in the Rate Base of \$1,991,613.92. Depletion of Leaseholds has been computed on the basis of a unit charge per M cu. ft., the annual amount of depletion allowed being free capital as opposed to a sinking fund which is not free capital. We are includ-

ing Repair and Cleanout Tools and Equipment, and Automotive and Construction Equipment at Present Worth as heretofore found by us; this is by reason of the fact that depreciation on these items is charged out currently to job orders and is, therefore, not subject to computation on a sinking fund basis. We have determined a Rate Base comprising the Transmission Properties and a Rate Base comprising the Production Properties, as well as a total covering both Transmission and Production Properties.

[fol. 19-71] The Rate Base, as of December 31, 1931, comprising both Production and Transmission Properties is found as follows:

Leaseholds	\$1,991,613.92
Repair and Cleanout Tools and Equipment ..	15,764.33
Automotive and Construction Equipment	80,931.80
All Other Physical Property—Reproduction Cost New	38,140,969.27
Non-Physical Property Including Working Capital—Reproduction Cost New (Equals 14.96% of above items)	6,017,338.21

Total Rate Base—Transmission and Production Properties	\$46,246,617.53
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The Rate Base, as of December 31, 1931, comprising the Production Properties only is as follows:

Leaseholds	\$1,991,613.92
Gas Wells	2,044,318.76
Other Production Structures	14,313.70
Repair and Cleanout Tools and Equipment ..	15,764.33
Non-Physical Property—14.96% of above Items	608,275.20

Rate Base—Production Properties. Only	\$4,674,285.91
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The Rate Base, as of December 31, 1931, comprising the Transmission Properties is found as follows:

Total Rate Base—Transmission and Produc- tion Properties	\$46,246,617.53
Less Production Properties	4,674,285.91

Rate Base Transmission Properties Only	\$41,572,331.62
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Except for the effect of the accrued depletion or depreciation of Leaseholds, Repair and Cleanout Tools, and Automotive and Construction Equipment, the above Rate Bases are undepreciated. The Rate Bases are in excess of the averages for the year 1931 by reason of the fact that additions to the property were being built and acquired during the year which resulted in net additions to the property.

Rate of Return.—The principal sources of the monies invested in the Lone Star Gas Company, including public service property, non-public service property, and the Fort Worth Distributing System (Fort Worth Division) were substantially as follows:

Capital Stock Paid In	\$12,500,000 (Tr. p. 7907)
Stock Dividends	1,000,000 (Ex. 26, p. 19)
Borrowings	19,000,000 (Tr. p. 60)
From Earnings	12,900,000 (Tr. p. 7907)
From Depreciation Provided ...	13,200,000 (Ex. 26, p. 94)

[fol. 19-72] The capital stock was "paid in" in cash and property. The Lone Star Gas Corporation owns 95% or more of the outstanding capital stock. Borrowings were from the Lone Star Gas Corporation at a rate of 6 per cent per annum except for some relatively small amounts from banks which were mostly at a slightly smaller interest rate (Tr. pp. 7912 and 7913): The Lone Star Gas Company has not incurred any material costs of financing. The Lone Star Gas Company had no obligations outstanding as of December 31, 1931, which bore interest in excess of 6 per cent per annum.

The financial history of both the public service and non-public service properties of the Lone Star Gas Company is shown by the tabulation set forth on pages 94 and 95 of Exhibit 26. This tabulation shows the total net profit before depreciation through December 31, 1931, to have been \$58,611,512.00. This compares with the total of \$51,303,230.99 found by Mr. Huley as available for depreciation and return on the public service properties alone through December 31, 1931. After deducting for depreciation, the weighted average return on the undepreciated book cost of the public service properties amounted to approximately 10 per cent per annum from the beginning of the company through December 31, 1931. (See Id., "Going Concern Value.")

The public and non-public service properties paid cash dividends of \$20,983,601.97 and stock dividends of \$1,000,000

from the beginning through December 31, 1931 (Ex. 26, p. 95). As heretofore set forth the property has been built to a large measure out of earnings and depreciation reserve, the stockholders having paid in only some \$12,500,000 in cash and property. In considering the financial history of the company it should be borne in mind that the substantial amounts of overheads (non-physical property) as herein evaluated were largely paid for as current operating expenses.

The industrial gas revenues of the Lone Star Company fell off over a million dollars during the period 1929 to 1932. This was due largely to the competition of low priced fuel oil. This situation not only caused losses in the industrial gas revenues of the Lone Star Gas Company but also seriously affected the oil producing and refining companies. It is a matter of common knowledge that many of the larger oil producing and refining companies operating in Texas earned no return whatever on their investment during the years 1931 and 1932, in fact most of these companies suffered deficits during those years. It is further a matter of common knowledge that few business undertakings of any nature were able to earn more than operating expenses during 1931 and 1932.

Mr. Connor, a witness for the Company, introduced in Exhibit 22, 1932 quotations on all of the listed bonds and senior securities of all of the larger natural gas companies in the United States. Many of the natural gas companies had defaulted the interest on their bonds or other senior securities (prior to October 18, 1932). The quotations clearly indicated that the earnings of only a few of the [fol. 19-73] natural gas companies, including the Lone Star group, were sufficient to guarantee any certainty of interest payments on the bonds and other senior securities.

The Lone Star Gas Company is in a sound financial position; it has a virtual monopoly of the domestic gas business in the cities which it serves; it has adequate gas reserves; it has been financed without the necessity of issuing any bonds or other senior securities. We have otherwise allowed for the complete amortization of the property within the probable life of available gas reserves thus removing any hazards from this natural gas utility as such.

We find six per cent to be the minimum fair rate of return and we find this rate to be applicable to the year 1931. The

prices of labor and materials which we have adopted for December 31, 1931, were only 8.9 per cent less than the peak prices of 1929 (Tr. p. 10,980), whereas the net earnings for 1931 and 1932 were off 18 per cent (Ex. 26, p. 21) from 1929 despite a 17 per cent increase in public service property (Ex. 26, p. 91). A gas rate which would yield a 6 per cent return on fair value during 1931 and 1932 would have yielded a materially greater return during the four prior years (as is hereinafter shown) when industrial conditions and competition from fuel oil were more normal. A return to normal industrial conditions and to normal fuel oil competition will increase the rate of return materially.

In *Bluefield Waterworks Company v. Public Service Commission* (262 U. S. 679) the Supreme Court said:

"What annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard for all relevant facts. A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility, and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its proper duties."

Excess Earnings Over a 6 Per Cent Return—1931.—A 6 per cent return on the Rate Base comprising both Production and Transmission Properties of \$46,246,617.53 amounts to \$2,774,797.05. Deducting this amount from the \$4,143,356.75 available for return and federal income tax, we find \$1,368,559.70 to be the excess earnings over and above 6 per [fol. 19-74] cent for return and Federal income tax for the year 1931. This computation includes a return on Production Properties with Leaseholds evaluated on the basis of Method (2) as hereinbefore considered under the heading "Leaseholds."

On the basis of the value of the gas produced (Method (3) under "Leaseholds") by the Lone Star Gas Company during the year 1931, we find the excess earnings over and above 6 per cent for return and federal income tax to be \$1,767,859.76 for the year 1931. The value of the gas produced by the Lone Star Gas Company during 1931 at the prevailing well head price was \$213,507.72 (Tr. p. 8497) exclusive of Petrolia Field Production which had a value of \$23,725.68 (Ex. 29, p. 40), making a total of \$237,233.40. We have allowed for the production of this gas as included in the foregoing paragraph (Method 2) as follows:

Production System Expense—From Ex. 26, p. 27	\$60,068.40
Gross Production Tax—2% per annum; 2% of \$237,233.40 for four 1931 months only	1,581.56
Depreciation of Gas Well Equipment and Con- struction \$2,044,318.76 @ 4.748%	97,064.25
Depreciation of Other Production System Structures \$14,313.70 @ 7.296%	1,044.33
Amortization of Production Property Over- heads \$608,275.20 @ .344%	2,092.47
Depletion of Leaseholds	15,631.45
Dry Hole Expense	79,453.12
Cancelled and Surrendered Lease Expense	99,140.73
Return on Production Properties \$4,674,285.91 @ 6%	280,457.15
Total	\$636,533.46

Excess earnings for 1931 of \$1,368,559.70 were found above on the basis of evaluating leaseholds at cost and allowing all production expenses (Method (2)). By deducting from this amount the cost or value of the gas produced during 1931, \$237,233.40 and adding back in the \$636,533.46 allowed (under Method 2) we find the excess of earnings over and above 6 per cent for return and federal income tax for the year 1931 of \$1,767,859.76 as above set forth.

Federal Income Tax Based Upon Minimum 6 Per Cent Return.—Throughout this opinion we have computed Return before Federal Income Tax. Federal Income Tax computed on the basis of 1931 actual earnings amounted to \$302,302.41 (Ex. 1, p. 2) before taking credit for interest paid on borrowings. The reduction in earnings to give a

6 per cent return on both transmission and production properties would have been \$1,368,559.70 for the year 1931. The reduction in Federal Income Tax for 1931 would, therefore, [fol. 19-75] have been \$164,227.16 (12 per cent) (Tr. p. 51) of \$1,368,559.70. Although the record is not such that we can compute the exact amount of the 1931 credit for interest on borrowings we are able to find that it approximated 6 per cent of \$19,000,000.00 at 12 per cent or \$136,800.00. Inasmuch as the reduction in tax at the 6 per cent return plus the credit for interest on borrowings approximates the computed 1931 tax on the actual earnings, no Federal Income Tax would have been paid on the basis of the minimum 6 per cent return. A similar result would obtain for 1932. Under like conditions and regulations it will be unnecessary for the Company to pay Federal Income Tax for future years in which it earns only the minimum 6 per cent return. We have made no computations on the alternate basis of allowing the Company the value of the produced gas at the prevailing price at the well head as the net earnings and resulting income tax would be even less on this basis.

Under these conditions it has been unnecessary for us to consider the fact that the owners are relieved of any payment of normal income tax on dividends received from the Lone Star Gas Company.

Reduction in Domestic Gas Rate to Give 6 Per Cent Return for 1931.—The 1931 sales of domestic gas amounted to 17,023,686.7 M cu. ft. (Ex. 26, pp. 22 and 23). By dividing the \$1,368,559.70 excess earnings over and above a 6 per cent return for 1931 by domestic gas sales, we obtain 8.039 cents per M cu. ft. as the reduction in domestic gas rates necessary to give a 6 per cent return for the year 1931, on the basis of allowing a Return on both Production and Transmission Properties and of allowing all production expenses (Method (2)). By dividing \$1,767,859.76 excess earnings over and above a 6 per cent Return for 1931 by the domestic gas sales, we obtain 10.385 cents per M cu. ft. as the reduction in domestic gas rates necessary to give a 6 per cent Return for the year 1931 on the basis of allowing the value of the gas produced by the Company at the prevailing price at the well head (Method (3)). This would be the reduction if the Lone Star Gas Company were to receive for the gas it produced the same price it was paying other owners.

Return on Transmission and Production Properties for Years 1927 to 1932 Based Upon 8-Cent Reduction in Domestic Gas Rate.—Net Earnings before Dry Hole Expense, Cancelled and Surrendered Lease Expense, Depreciation, Depletion, Return, and Federal Income Tax (and after Management Fees) were as follows for the years 1927 to 1932, inclusive (Ex. 26, p.4):

1927	\$5,149,429.76
1928	5,592,596.78
1929	6,442,758.41
1930	5,995,077.14
[fol. 19-76]	
1931	5,214,273.65
1932	5,280,594.07

The average dry hole expense which we have heretofore found amounts to \$79,453.12 per annum and the cancelled and surrendered lease expense amounts to \$99,140.73 per annum, or a total of \$178,593.85 per annum.

By deducting \$178,593.85 from the Net Earnings as found above for each of the years we find Net Earnings before Depreciation, Depletion, Return, and Federal Income Tax (and after Management Fees) as follows:

1927	\$4,970,835.91
1928	5,414,002.93
1929	6,264,164.56
1930	5,816,483.29
1931	5,035,679.80
1932	5,102,000.22

The Lone Star Gas Company began with the year 1929 the payment of a management fee to the Lone Star Gas Corporation. We have found this payment to be almost entirely a distribution of profits to the owners of the Company. This "management fee" has been paid in the following amounts:

1929	\$95,062.03
1930	105,625.72
1931	91,375.38
1932	87,197.87

By adding "management fees" back in to the Net Earnings as found above, we find Net Earnings before Depreciation, Depletion, Return, and Federal Income Tax as follows:

1927	\$4,970,835.91
1928	5,414,002.93
1929	6,359,226.59
1930	5,922,109.01
1931	5,127,055.18
1932	5,189,198.09

Depletion is arrived at by multiplying the amount of Company produced gas by the unit depletion charge of \$.003174 per M cu. ft. as follows:

Year	Company Produced Gas M Cu. Ft.	Unit Depletion Charge Per M Cu. Ft.	Depletion Amount
1927	2,671,443	\$.003174	\$8,479.16
1928	3,451,935	.003174	10,956.44
1929	5,162,647	.003174	16,386.24
1930	6,473,463	.003174	20,546.77
1931	4,924,844	.003174	15,631.45
1932	4,829,077	.003174	15,327.49

The amounts of Company produced gas for the years 1927 to 1929, inclusive, were arrived at by deducting one-[fol. 19-77] eighth royalty from the total Company production, including Petrolia. The 1931 and 1932 productions do not include the Petrolia District production. The 1932 Company produced gas above set forth does not include the gas produced by the Meridian properties which amounted to 468,182 M cu. ft. (Tr. p. 11216). We have hereinafter provided for the gas produced by the Meridian properties.

By deducting from Net Earnings as found above the Depletion for each year we find Net Earnings before Depreciation, Return, and Federal Income Tax as follows:

1927	\$4,962,356.75
1928	5,403,046.49
1929	6,342,840.35
1930	5,901,562.24
1931	5,111,423.73
1932	5,173,870.60

The Lone Star Gas Company bought the Meridian properties on January 1, 1932. If the Meridian gas had been purchased at the same price paid the Meridian Gas Company (owned by the Lone Star Gas Corporation) for this

gas in 1931, viz., 15 cents per M cu. ft., it would have cost the Lone Star Gas Company \$70,227.30 delivered to the Banner Measuring Station. This 15 cents price compares with the 10 cents per M. cu. ft. which was being paid (1931 and 1932) other owners adjacent to the same transmission line (Line H) but nearer to the market. We are treating the cost of this gas as an expense by reason of the method which we have adopted for providing a return on the Meridian properties which were brought into the system since the date of the valuation submitted to us.

The 1932 Net Earnings of \$5,173,870.60 as given above is after Regulatory Commission Expense of \$163,739.01 (Ex. 26, p. 32). We are of the opinion that this item should be capitalized and amortized over a period of ten years. The amount of \$12,422.54 per annum will amortize \$163,739.01 in ten years on a 6% sinking fund basis. Net earnings for 1932, therefore, will be increased \$151,316.47 (\$163,739.01 minus \$12,422.54) by allowing the capitalization of this item.

By deducting from the 1932 Net Earnings the \$70,227.30 cost at 15 cents per M cu. ft. of the gas produced by the Meridian Properties in 1932 and by adding the \$151,316.47 increase by reason of the capitalization of 1932 Regulatory Commission Expense, we find the adjusted 1932 Net Earnings before Depreciation, Return and Federal Income Tax to be \$5,254,959.77.

A reduction in 8 cents per M cu. ft. in the price collected for domestic gas would have reduced earnings in the following amounts, providing there has been no increase in sales by reason of the decreased price:

Year	Domestic Gas Sales M Cu. Ft. (Ex. 26, p. 5)	Reduction Per M Cu. Ft.	Amount of Reduction in Net Earnings
1927	12,171,286.7	\$.08	\$973,702.94
[fol. 19-78]			
1928	14,992,164.8	.08	1,199,373.18
1929	17,681,921.7	.08	1,414,553.74
1930	17,974,266.5	.08	1,437,941.32
1931	17,023,686.7	.08	1,361,894.94
1932	16,651,688.0	.08	1,332,135.04

By deducting from the "Net Earnings before Depreciation, Return and Federal Income Tax" for each year the amount of the reduction in Net Earnings resulting from an

8 cents per M cu. ft. in the domestic gas rate, we find the "Net Earnings before Depreciation, and Federal Income Tax" which would have obtained at the 8 cents per M cu. ft. lesser rate for domestic gas. The "Net Earnings before Depreciation, Return and Federal Income Tax" would have been as follows at the 8 cents per M cu. ft. lesser rate for domestic gas:

1927	\$3,988,653.81
1928	4,203,673.31
1929	4,928,286.61
1930	4,463,620.92
1931	3,749,528.79
1932	3,922,824.73

The Rate Base for Transmission and Production Properties, as of December 31, 1931, which we have heretofore found, is \$46,246,617.53. The Book Cost Exclusive of Petrolia Field Account was \$47,696,533.11 as of December 31, 1931 (Ex. 26, p. 91). Inasmuch as a large part of the properties were built during peak-price periods, and inasmuch as the Rate Base is "undepreciated," the comparison is quite reasonable. The average book cost (including Petrolia Field Account) for the year 1927 was \$29,517,879.08; 1928, \$35,661,928.96; 1929, \$41,340,023.12; 1930, \$46,745,646.84 (Ex. 26, p. 91). These averages are of the book cost as of December 31 and as of December 31 of the year preceding, except for 1927, in which case the average is of the book costs on January 1, 1927, and December 31, 1927. For the purposes of this computation, we are adopting as a rate base the average book cost for 1927, 1928, 1929, 1930. For 1931 we are using the rate base heretofore found as of December 31, 1931, which is somewhat higher than the average for the year. For the year 1932 we are using as a basis the December 31, 1931, figure, inasmuch as the testimony shows that material and labor prices (and 1933 prices to the date of the end of the hearing) were slightly less than the prices used for material and labor as of December 31, 1931, and as adopted by us. Exclusive of the Meridian Gas Company acquisition and of the Southern Oil and Production Company acquisition the book cost of the Lone Star Gas Company shows a slight decrease during the year. Again excluding the Meridian and South- [fol. 19-79] ern Oil and Production Company properties,

we find that a Rate Base for the year 1932 would be less than that found as of December 31, 1931, due to a small decrease in material and labor prices and to a small decrease in the public service properties. The Lone Star Gas Company purchased the properties of the Meridian Gas Company from the Lone Star Gas Corporation on January 1, 1932. Prior to that time the Lone Star Gas Company was paying fifteen cents per M cu. ft. at the Banner Measuring Station. Neither the Company witnesses nor the witness Freese submitted an appraisal of these production properties. We have allowed not only the actual production expenses but also fifteen cents per M cu. ft. for the gas produced during 1932 as a return on this property. In other words, if instead of purchasing the property the Lone Star Gas Company had continued to pay the very ample price of 15 cents per M cu. ft. to the affiliated Meridian Gas Company, the 1932 operating expenses could be eliminated from the 1932 computations. The Southern Oil and Production Properties were acquired on October 1, 1932, at a book cost of \$766,600.11 for the public service properties. Inasmuch as this latter property was a part of the Lone Star Gas Company properties for the last three months of 1932, there should be an addition to the average rate base of one-fourth of \$766,600.11; or \$191,650.03. There should also be added one-half of the capitalization of the 1932 Regulatory Commission Expense of \$163,739.01, or \$81,869.50. The addition of \$191,650.03 for the Southern Oil and Production Properties and \$81,869.50 for the capitalization of Regulatory Commission Expenses to the December 31, 1931, rate base of \$46,246,617.53 results in an average 1932 rate base of \$46,520,137.06. We, therefore, find average rate bases for the years 1927-1932, inclusive, to be not more than the following:

1927	\$29,517,879.08
1928	35,661,928.96
1929	41,340,023.12
1930	46,745,646.84
1931	46,246,617.53
1932	46,520,137.06

It should be clearly understood that these are "undepreciated" rate bases.

The percentage available for Depreciation, Return and Federal Income Tax is found by dividing the Net Earnings

before Depreciation, Return, and Federal Income Tax by the average "undepreciated" rate base for the corresponding years and are as follows based upon the 8 cent per M cu. ft. reduction in domestic gas rates:

[fol. 19-80]

Year	Earnings	Rate Base	Per Cent
1927	\$3,988,653.81	\$29,517,879.08	13.51
1928	4,203,673.31	35,661,928.96	11.79
1929	4,928,286.61	41,340,023.12	11.92
1930	4,463,620.92	46,745,646.84	9.55
1931	3,749,528.79	46,246,617.53	8.11
1932	3,922,824.73	46,520,137.06	8.43

The depreciation as related to the undepreciated rate base amounts to 2.09 per cent per annum based upon a 6 per cent sinking fund and the detail 1931 figures (\$968,066.98 divided by 46,246,617.53).

The Returns based upon a domestic gas rate reduction of 8 cents per M cu. ft. would, therefore, have been:

1927	11.42
1928	9.70
1929	9.83
1930	7.46
1931	6.02
1932	6.34
Average	8.46

The 1927 and 1928 net earnings do not include the annual earnings which would reflect the amount received from the United States Government "in consideration of the Lone Star Gas Company conserving for government use the gas purchased in the Petrolia field containing in excess of one-half per cent of helium" (Ex. 26, p. 11). Spread over the ten year period of the contract and using a 6 per cent compound discount factor, these annual earnings would amount to \$203,801.93 for each of the years 1927 and 1928 (Ex. 26, p. 12). The 1930 and 1931 net earnings do not include the charge of \$194,279.50 made the Northern Natural Gas Company for overhead expenses incurred by the Lone Star Gas Company in connection with construction work performed for the Northern Natural Gas Company and in connection with "other corporate matters" (Ex. 26, p. 12). Spread over the two years this \$194,279.50 would amount to \$97,-

139.75 for each of the two years. Spread over the entire six year period 1927-1932 these earnings which have been excluded amount to a return of 0.24% on the average undepreciated rate base.

If the earnings from the Government contract and charges to the Northern Natural Gas Company had been included the return would have been approximately as follows:

1927	11.66
1928	9.94
1929	10.07
1930	7.70
1931	6.26
1932	6.58
Average	8.70

[fol. 19-81] The six year period 1927-1932 includes three years (1927-1929) which were "prosperous" years and three years (1930-1932) which were "lean" years. The conditions prevailing in the natural gas industry during each of these two periods were much the same as the conditions prevailing in comparable industries throughout the country during the same periods. The average rate of return to the Lone Star Gas Company during the six past years would have been 8.70 per cent at the proposed 8 cent per M cu. ft. reduction in domestic gas rate. The only possible way we have of predicting the average future industrial conditions is on the basis of historical average conditions. The Lone Star Gas Company has a virtual monopoly on the domestic gas business of the area it serves; its gas reserves are such as to guarantee a sufficiency during the period which we have allowed for complete amortization of the property. A gas rate which will earn a minimum return of 6 per cent during such years as the past three years and which will average in excess of 8 per cent during such years as the past six years, will certainly assure confidence in the financial soundness of the Lone Star Gas Company, will maintain its credit and will enable it to raise money necessary for the discharge of its public duties.

During the years 1927 to 1932 inclusive, the company built approximately half of its public service properties. During this period not over one-fourth of the administration and legal expense, engineering, and supervision during construction as allowed by us as part of the rate base was paid for

out of capital funds, the major portion of these costs having been paid as operating expenses and is included in the operating expenses as set forth in this section. Taxes during construction during this period were paid entirely out of the operating expenses as herein set forth. Any preliminary and organization expenses incurred during this period (1927-1932) were paid for largely out of operating expenses. All costs of acquiring new business, training personnel, keeping geological and engineering records, and of keeping the company's books were paid out of operating expenses during this period. The depreciation for the years 1927-1932 inclusive, included depreciation on any and all idle plant. The returns set forth are returns on any idle plant as well as any plant not idle.

Return on Transmission Properties Based Upon 8-Cent Reduction in Domestic Gas Rate and Allowance of Market Value of Gas at the Well Head.—If the gas produced by the Company during 1931 had been valued at the well head at the prevailing field price it would have been necessary for us to have allowed \$237,233.40 for this gas. On the other hand operating expenses, depreciation, and depletion would have been reduced as follows:

Production System Expense	\$60,068.40
Gross Production Tax	1,581.56
[fol. 19-82] Depreciation of Gas Well Equipment	97,064.25
Depreciation of Other Production System Structures	1,044.33
Amortization of Overheads Applicable to Production Property	2,092.47
Depletion of Leaseholds	15,631.45
Dry Hole Expense—Average	79,453.12
Cancelled and Surrendered Lease Expense—Average	99,140.73
Total	\$356,076.31

By deducting the \$237,233.40 well head price of the gas from, and adding the \$356,076.31 to the amount of \$4,143,356.75 previously found as available for return and Federal income tax for 1931, we arrive at \$4,262,199.66 as the amount available for return and Federal income tax on the basis pricing all gas at the well at the prevailing field price. A re-

duction of 8 cents per M cu. ft. in the domestic gas rate would have decreased the 1931 earnings \$1,361,894.94 leaving \$2,900,304.72 as the amount available for return and Federal income tax at the reduced rate.

We have heretofore found a Rate Base applicable to Transmission Properties of \$41,572,331.62. The per cent available for Return and Federal Income Tax is therefore 6.98 per cent (\$2,900,304.72 divided by \$41,572,331.62) for the year 1931 on this basis. On the alternative basis (Return on Transmission and Production Properties Based Upon 8 Cent Reduction) used in the previous computation the return was 6.02 per cent before giving effect to Government and Northern Natural earnings. The difference due to the different treatment of production properties is .96 per cent. The return for the other years would be affected by substantially the same difference as in 1931, viz., .96 per cent. Taking into consideration the earnings from the Government Contract and the Northern Natural Gas Company, the return on the basis of an 8-cent reduction in domestic gas rate and on the basis of the prevailing price of gas at the well head the return would have been as follows:

1927	12.62
1928	10.90
1929	11.03
1930	8.66
1931	7.22
1932	7.54
Average	9.66

The average return for six years is 9.66 per cent at the 8 cents reduced domestic gas rate and at the prevailing gas rate at the well head.

Corrections to Returns Above Six Per Cent.—Rates of return throughout this opinion have been computed on an undepreciated rate base and this base gives correct results to the extent of the rate of interest used for sinking fund [fol. 19-83] accruals, viz., six per cent. Any return above six per cent should be computed on a depreciated rate base. Inasmuch as the depreciation reserves actually set up by the Company are substantially in the correct amount and are substantially the same as the sinking fund method of handling depreciation requires, the ratio of the book value to the book cost may serve as a fairly accurate basis of cor-

recting the return above six per cent to a depreciated rate base. The ratios of book value to book cost are as follows as of December 31st of each year (from Ex. 26):

1927	.7237 to 1.0000
1928	.7266 to 1.0000
1929	.7561 to 1.0000
1930	.7700 to 1.0000
1931	.7473 to 1.0000
1932	.7199 to 1.0000

The excess of return at the 8-cent reduced rate, including the earnings from the Government Contract and the Northern Natural Gas Company, and valuing the gas at the well head at the prevailing field price, over and above 6 per cent, is as follows for each of the years 1927-1932, inclusive:

1927	6.62
1928	4.90
1929	5.03
1930	2.66
1931	1.22
1932	1.54
Average	3.66

The returns, 6 per cent on an undepreciated rate base and the remainder on a depreciated rate base, at the 8-cent reduced rate (and including earnings from Government and Northern Natural Contracts and valuing well head gas at the prevailing field prices) would be:

1927	15.15
1928	12.74
1929	12.65
1930	9.45
1931	7.63
1932	8.14
Average	10.96

The average for the six years, including the three "prosperous" and the three "lean" years is 10.96 per cent at the 8-cent reduced rate and on the above basis. A correction to the other tabulations of rates of return using a depreciated rate base for the returns in excess of 6 per cent can be made in this same manner.

[fol. 19-84] Order of the Commission

The Railroad Commission having instituted a proceeding upon its own motion inquiring into the rates charged by the Lone Star Gas Company for domestic gas sold to distributing companies at the city gate station, hereby finds as a fact that the rate of \$0.40 per thousand cubic feet as now charged by Lone Star Gas Company is unfair, unjust and unreasonable.

Basing its order on the foregoing finding of fact and on such other findings and statements of facts as are set out in the opinion next preceding this order, or in this order

It is Ordered, Adjudged and Decreed that effective as of the next billing date the Lone Star Gas Company shall charge, bill and receive for domestic gas at the city gate from all distributing companies served by it, a rate not to exceed \$0.32 per thousand cubic feet.

It is Further Ordered, Adjudged and Decreed that a rate not to exceed \$0.32 per thousand cubic feet at the city gate is hereby fixed, approved and promulgated and found and declared to be fair, just and reasonable and shall remain in force and effect until the Commission shall have otherwise determined, pursuant to other proceedings in respect to the fixing of city gas rates for domestic gas on said Lone Star Gas Company's lines.

It is Further Ordered, Adjudged and Decreed that this proceeding shall be kept open for such further orders as may be proper.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of Texas.

Dated at Austin, Texas, this 13th day of September A. D. 1933.

Railroad Commission of Texas, Lon A. Smith, Chairman. C. V. Terrell, Commissioner. Ernest O. Thompson, Commissioner.

Attest: C. F. Petet, Secretary. (Seal.)

[fol. 20]

EXHIBIT "B" TO PETITION

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION

In Equity. No. 467

LONE STAR GAS COMPANY, Plaintiff,

vs.

RAILROAD COMMISSION OF TEXAS et al., Defendants

On this 11th day of November, A. D. 1933, came on to be heard the application of Lone Star Gas Company, plaintiff, for an interlocutory injunction in the above styled and numbered cause, before a court of three judges duly called and assembled pursuant to the provisions of Section 266 of the Judicial Code of the United States, as amended. Whereupon the defendants Lon A. Smith, C. V. Terrell and E. O. Thompson, the members of and constituting the Railroad Commission of Texas, and James V. Allred, Attorney General of the State of Texas, presented a motion for stay of proceedings herein; and

It appearing to the Court from the motion of the said defendants for stay of proceedings herein, that the said defendants together with the State of Texas had as plaintiffs instituted a suit against Lone Star Gas Company, the plaintiff herein, as defendant in Docket No. 53033 in the Fifty-[fol. 21] third Judicial District Court of Travis County, Texas, to restrain and enjoin the violation by Lone Star Gas Company of the terms, provisions and requirements of an order, Exhibit A in plaintiff's bill of complaint herein, entered by the Railroad Commission of Texas on September 13th, 1933, fixing and prescribing rates to be charged for natural gas and natural gas service by Lone Star Gas Company at the city gates of numerous towns, cities and communities in the State of Texas and that such suit involves the validity of said order of the Railroad Commission of Texas; and

It further appearing to the Court from said motion to stay all proceedings herein, that upon a motion of the State of Texas and the defendants herein, Lon A. Smith, C. V. Terrell and E. O. Thompson, the members of and constituting

the Railroad Commission of Texas, and James V. Allred, Attorney General of the State of Texas, filed by them as plaintiffs in said cause No. 53033 on the docket of the Fifty-third Judicial District Court of Travis County, Texas, the said State Court did on the 5th day of October, 1933, enter an order staying all proceedings against the plaintiff herein, Lone Star Gas Company, either under the terms, provisions and requirements of the Railroad Commission's said order of date September 13th, 1933, or under the rules and regulations of the Railroad Commission of Texas or under any law of this State, pending the final determination of said suit in the Fifty-third Judicial District Court of Travis County, Texas, and which said stay order restrains the Railroad Commission of Texas, the individual members thereof, the Attorney General of Texas and all other officials and employees of the State of Texas or of the Railroad Commission or of any other State department, and all other persons, from instituting or prosecuting any proceeding [fol. 22] against plaintiff herein, Lone Star Gas Company, under said order of said Railroad Commission; or from attempting to enforce the duties, obligations and requirements imposed upon plaintiff herein by said order or by the rules and regulations of the Railroad Commission of Texas, or by any law of this State, whether by suit for mandamus, mandatory injunction, injunction, penalties, damages, quo warranto, forfeiture or receivership, pending a decision by the said Fifty-third Judicial District Court of Travis County, Texas, of the constitutionality of said order; and restraining all said State officials and departments and their employees and all other persons from enforcing or attempting to enforce the provisions of said order against Lone Star Gas Company, plaintiff herein, until the final determination by said Fifty-third Judicial District Court of Travis County, Texas, of cause No. 53033 on the docket of said court; and that said order provides that plaintiff herein, Lone Star Gas Company, shall not be subjected to any penalties, damages or forfeitures on account of the failure of said plaintiff herein to comply with the terms and provisions of the said order of the Railroad Commission of Texas entered on September 13th, 1933, or on account of any provisions of the Statutes of the State of Texas where such failure to comply with the law has taken place or takes place before the final determination of said cause No. 53033 on the docket of said District Court; and

The defendants Lon A. Smith, C. V. Terrell and E. O. Thompson, the members of and constituting the Railroad Commission of Texas, and James V. Allred, Attorney General of the State of Texas, having announced in open court by and through Elbert Hooper, First Assistant Attorney General of the State of Texas, counsel of record for said defendants and by whom said defendants appeared in this [fol. 23] Court, that the said defendants and the State of Texas, and each and all of them, did not desire to enforce and had no intention of enforcing or attempting to enforce against the plaintiff herein, Lone Star Gas Company, any of the pains, penalties or forfeitures provided for by law by reason of any violation by Lone Star Gas Company of the terms, provisions and requirements of said order, committed or done by said plaintiff herein at any time before the final determination of said cause No. 53033 on the docket of the Fifty-third Judicial District Court of Travis County, Texas, and that said order entered in the State Court was to be construed as suspending the operation of the said order of the Railroad Commission pending the final determination of said cause; and said Assistant Attorney General of the State of Texas, for said defendants, herein announced in open court that said defendants would consent and agree to an injunction by this Court entered in this cause, restraining said defendants, and each of them, from at any time enforcing or attempting to enforce against the plaintiff herein, Lone Star Gas Company, any of the pains, penalties or forfeitures which may arise or accrue because of or by reason of any violation of the terms, provisions and requirements of said order by plaintiff herein, committed or done herein by the plaintiff, Lone Star Gas Company, at any time prior to final determination of said cause No. 53033 on the docket of the Fifty-third Judicial District Court of Travis County, Texas; and.

It appearing to the Court that by reason of said stay order in said Cause No. 53033 in the Fifty-third Judicial District Court of Travis County, Texas, and by reason of the aforesaid statements of the said defendants herein in open court, by and through Elbert Hooper, First Assistant Attorney General, that the plaintiff herein, Lone Star Gas Company, is fully protected from the imposition of any and all pains, penalties and forfeitures provided by law and arising by reason of the violation by Lone Star Gas Company, plaintiff herein, of any of the terms, provisions

and requirements of the said order of the Railroad Commission of Texas of date September 13th, 1933, done at any time prior to the final determination of said cause No. 53033 on the docket of the Fifty-third Judicial District Court of Travis County, Texas, and that upon the entry of an interlocutory injunction in this cause in compliance with the consent statements of said Assistant Attorney General, Elbert Hooper, and of the stay order of this Court, the requirements of Section 266 of the Judicial Code of the United States, as amended, will be complied with:

It Is, Therefore, Ordered, Adjudged and Decreed that the defendants Lon A. Smith, C. V. Terrell and E. O. Thompson, being the members of and constituting the Railroad Commission of Texas, and their respective successors in office and all of the assistants, agents, attorneys and representatives of the said defendants be, and each of them is hereby restrained and enjoined from enforcing or attempting to enforce, or from giving any effect to, by any means or methods, the said order of the Railroad Commission of Texas dated September 13th, 1933, directed against the plaintiff, Lone Star Gas Company, or any of the pains, penalties or forfeitures provided by law for any such violation of an order of said Commission by reason of the violation of any of the terms, provisions and requirements of said order, committed by plaintiff, Lone Star Gas Company, at any time prior to the final judgment in said cause No. 53033 on the docket of the Fifty-third Judicial District Court of Travis County, Texas.

[fol. 25] It Is Further Ordered that all proceedings in this cause shall be stayed in this court pending the final determination of cause styled The State of Texas et al. vs. Lone Star Gas Company, No. 53033 on the docket of the Fifty-third Judicial District Court of Travis County, Texas.

To the foregoing action of the Court in ordering a stay of all proceedings in this cause in this Court pending the final determination of said cause styled The State of Texas et al. vs. Lone Star Gas Company on the docket of the Fifty-third Judicial District Court of Travis County, Texas, the plaintiff took its exception in open court and such exception was allowed.

It is Further Ordered, however, that jurisdiction is hereby retained in this Court to enter such other and further orders upon the motion of either party as may be necessary

to protect the jurisdiction of this Court or to protect the rights of any party herein.

— — —, United States Circuit Judge. — — —,
United States Circuit Judge. — — —, United
States Circuit Judge.

[File endorsement omitted.]

[fol. 26] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

ORDER STAYING PROCEEDINGS—October 5, 1933

On This the 5th day of October, A. D. 1933, came on to be heard the motion of the plaintiffs in the above entitled and numbered cause for a stay of all proceedings under the order of the Railroad Commission of Texas entitled Gas Utilities Docket No. 75, dated September 13, 1933, fixing and prescribing the rates and charges to be collected by Lone Star Gas Company for natural gas sold by it at the city gates of the various cities, towns and communities served by the defendant in this State; and all proceedings in connection therewith under the laws of this State and under the rules and regulations of the Railroad Commission; and the Court, having considered said motion and the facts alleged in connection therewith, is of the opinion that the same should be granted.

It is therefore Ordered by the court that all proceedings against the defendant, Lone Star Gas Company, under and by virtue of the Railroad Commission's order entitled Gas Utilities Docket No. 75 and dated September 13, 1933, prescribing and fixing the rates to be charged and collected for natural gas sold at the city gates of the various cities, towns and communities served by said Lone Star Gas Company in this State, and all proceedings under and by virtue of the laws of this State and the rules and regulations of the Railroad Commission of Texas, be, and the same are hereby stayed pending the determination in this court of [fols. 27-30] the matters and controversies involved in this cause.

It is further Ordered that the Railroad Commission of Texas and Lon A. Smith, C. V. Terrell and Ernest O.

Thompson, and James V. Allred, Attorney General of Texas, and all other departments, officers, agents, servants and employees of said department and said officers, and all other persons in this State, shall refrain from instituting or prosecuting any proceedings against defendant, Lone Star Gas Company, on account of said order of said Railroad Commission entered on September 13, 1933, or from attempting to enforce any of the duties, obligations and requirements imposed upon the defendant herein by said order or by the laws of this State, whether by suit or mandamus, mandatory injunction, injunction, penalties, damages, quo warranto, forfeiture or receivership, or for any other penalties pending a decision by this court of the matters and things involved in this cause, and all said state officers, their agents, servants and employees, and all other persons, shall refrain from enforcing or attempting to enforce the terms and provisions of said order of the Railroad Commission against the defendant until the determination of this cause in this court.

It is further Ordered that the defendant herein shall not be subjected to any penalties, damages, or forfeitures on account of its failure to comply with the terms and provisions of the said order of the Railroad Commission entered on September 13, 1933, or on account of any provisions of the statutes of this State where such failure to comply with the law has taken or takes place before the final determination of this cause.

C. A. Wheeler, Judge, 53rd District Court of Travis County, Texas.

[fols. 31-35] IN 53RD JUDICIAL DISTRICT COURT, TRAVIS COUNTY, TEXAS

[Title omitted]

SECOND AMENDED ANSWER OF LONE STAR GAS COMPANY,
DEFENDANT—Filed May 30, 1934

Comes Now Lone Star Gas Company, a corporation, defendant in the above styled and numbered cause, and, leave of the court having been had and obtained, files this its Second Amended Original Answer, replying to the Second Amended Original Petition of plaintiffs heretofore filed herein, and would respectfully show:

A

That this Honorable Court has no jurisdiction to entertain plaintiffs' second amended original petition filed herein, or cause or causes of action therein set out and alleged, nor to grant the relief prayed for therein, because:

* * * * *

[fol. 36] 3. This Honorable Court should not entertain plaintiffs' second amended original petition, or the cause or causes of action therein set out, nor should it assume jurisdiction of this suit and permit plaintiffs to proceed with the trial of the same upon the merits for the following reason, to wit:

It is a fact which will not be disputed upon the trial of this cause, that a substantial portion of natural gas sold by defendant to various distributing companies at the city gates of various towns and cities in Texas moves at high pressures through defendant's large pipe lines extending through and from the State of Oklahoma and into the State of Texas, up to the city gates of various towns and cities in Texas. Furthermore, it appears from the statement accompanying the opinion and order of the Commission, and attached to plaintiffs' second amended original petition as Exhibit "A" thereto, that defendant is engaged

"in the production, transportation and sale at wholesale of natural gas * * * and engages in both interstate and intrastate commerce in the selling of gas to some 300 cities and towns in the States of Oklahoma and Texas."

It further appears that the order of the Railroad Commission attached to plaintiffs' second amended original petition as Exhibit "A" decrees that

"Lone Star Gas Company shall charge, bill and receive for domestic gas at the city gate, from all distributing companies served by it, a rate not to exceed 32 cents per thousand cubic feet."

[fol. 37] It further appears from plaintiffs' first supplemental petition filed herein, that a part of the natural gas sold by defendant at the city gates of various towns and cities in the State of Texas is transported through defend-

ant's natural gas pipe lines extending into Texas and through and from the State of Oklahoma.

These facts, which are not disputed, but are uncontroverted, will appear upon the evidence offered at the trial of this cause, and upon the introduction of the same, it will be apparent, as a matter of law, that the order of the Railroad Commission attached to plaintiffs' second amended original petition as Exhibit "A" was intended to, and does apply to natural gas transported by defendant in interstate commerce, and was intended to, and does, prevent defendant from charging for domestic gas at the city gate from all distributing companies served by it, a rate not to exceed 32 cents per thousand cubic feet for gas moving in interstate as well as gas moving in intrastate commerce, and that said order, representing an attempted exercise of a jurisdiction which the Railroad Commission of Texas does not possess, and being unconstitutional as in violation of the Commerce Clause of the Constitution of the United States insofar as it purports to, and does, affect the interstate business of the defendant, and, being indivisible, and being of such nature as that it does not appear therefrom that the Railroad Commission of Texas would have promulgated and entered the same had it known that it could not prescribe a rate to be charged for all gas sold and delivered by the defendant, [fol. 38] same is void and unenforceable in its entirety, and suit thereon cannot be maintained.

Defendant avers that it has been the purpose of plaintiffs, in their second amended original petition, to so allege the facts upon which their cause or causes of action stated therein are based, as to prevent it from appearing that defendant is engaged, in part, in the sale, transportation and delivery of natural gas of interstate commerce in order that its said petition may not be subject to general demurrer as would otherwise be the case; and to require this defendant to be put to a trial of this cause on the merits, at tremendous expense to this defendant, an expense to which this defendant should not be put in good conscience. Defendant says that it is the purpose and intention of plaintiffs to so plead in their second amended original petition as to prevent the law questions involved upon the undisputed facts from being determined preliminarily, to a trial upon the merits of said cause, and that the purpose of its pleading in this respect is to require this Honorable Court to main-

tain jurisdiction in this cause and try this case upon its merits, although, in view of the length of time which will be consumed in the trial of the case, and the great expense not only to this defendant, but to the taxpayers of this State, a trial on the merits should be avoided if it may be made to appear that the plaintiffs have no right to maintain this suit and invoke the jurisdiction of this Honorable Court in advance of such a trial on the merits.

[fol. 39] Wherefore, defendant prays that it be permitted to offer proof in connection with this, its plea to the jurisdiction, showing sufficient facts to permit this Honorable Court, at this time, to determine whether the order of the Railroad Commission is void in its entirety and unenforceable, and that, upon hearing in connection herewith, it be determined that the said order is void and unenforceable, and that, thereupon, plaintiffs' second amended original petition, and the cause or causes of action alleged therein, be dismissed, and that it have its costs.

4. This Honorable Court has no jurisdiction to entertain the cause of action set forth in plaintiffs' second amended original petition, because:

It appears from the order of the Commission attached to plaintiffs' second amended original petition, that the Railroad Commission of Texas therein ordered, adjudged and decreed

"That Lone Star Gas Company shall charge, bill and receive for domestic gas at the city gate, from all distributing companies served by it, a rate not to exceed 32 cents per thousand cubic feet."

It further appears from said order of the Commission that said rate was fixed, approved and promulgated as fair, just and reasonable. It appears from plaintiffs' second amended original petition, that this suit is brought by plaintiffs pursuant to the provisions of Article 6059 of Title 102 of the 1925 Revised Civil Statutes of Texas, and it is alleged to be in the nature of an appeal from the said order of the Commission. In this connection, defendant avers that, although in their original and first amended original petition, plaintiffs herein sought to enforce the opinion and order of the Railroad Commission as to all gas transported, sold and delivered by defendant, they now

seek, in their second amended original petition, to enforce the same only as to gas delivered at the city gates of various cities and towns in the State of Texas where defendant is engaged in intrastate commerce. That plaintiffs' right to maintain the suit alleged in their second amended original petition depends upon a determination that 32 cents is a just and reasonable rate and charge for gas moving in intrastate commerce. The order of the Commission sought to be enforced herein, and involved in this cause, which plaintiffs designate as an appeal, does not fix, or purport to fix a rate of 32 cents per thousand cubic feet for gas moving solely in intrastate commerce. It is apparent, therefore, that the issues involved in this suit as made by plaintiffs' pleadings will be the reasonableness of an order which the Commission in fact did not make, and that, whereas on an appeal from the order of the Commission, if in fact this suit was an appeal therefrom, the question would be the reasonableness or unreasonableness of the order of the Commission insofar as the procedure outlined in Article 6059 is concerned, the issue in the case as made by plaintiffs' second amended original petition is the reasonableness of a charge of 32 cents for intrastate gas or for gas at various towns and cities supplied by defendant in intrastate commerce. It, therefore, appears that, in fact and in law, plaintiffs' second amended original petition does not constitute an appeal from [fols. 41-42] the order of the Commission, nor is the same in the nature of an appeal from the order of the Commission.

The jurisdiction of this Honorable Court is invoked pursuant to the provisions of Article 6059 by the plaintiffs herein. It is apparent that, under the issues made by plaintiffs' second amended original petition, this cause does not come within the purview of Article 6059, and this court does not have jurisdiction by virtue of the provisions of said Article, and plaintiffs herein are seeking a determination not of the reasonableness and justness of the order of the Commission actually entered, but as to the reasonableness and justness of a rate which the Commission, in its said order, did not promulgate, and did not hold just and reasonable for intrastate gas.

Therefore, defendant says that this Honorable Court does not have jurisdiction to entertain this suit by virtue of the provisions of Article 6059. Nor does it have original jurisdiction to entertain the same inasmuch as in order to deter-

mine the reasonableness or unreasonableness of a rate of thirty-two cents for gas moving exclusively in intrastate commerce it would be necessary for this court to be vested with legislative powers for the determination of what is a reasonable rate for intrastate gas in the first instance requires legislative action.

Wherefore, defendant says that this suit cannot be maintained, and plaintiffs' second amended original petition and causes of action therein set out should be dismissed for want of jurisdiction.

* * *

[fols. 43-44] Wherefore, for all of the reasons stated in each of its foregoing pleas, defendant prays that plaintiffs' second amended original petition, and the cause or causes of action alleged therein, be dismissed, and that it have its costs.

Lone Star Gas Company, by Karl F. Griffith, Thompson & Barwise, Ben H. Powell, Roy C. Coffee, Marshall Newcomb, Its Solicitors.

[fols. 45-52]

B.

Subject to and without waiving its pleas to the jurisdiction of this Honorable Court hereinabove set forth, defendant says that this proceeding and the cause and causes of action formally alleged in plaintiffs' second amended original petition, should be abated for the following reasons:

* * *

[fol. 53] 6. It is alleged in plaintiffs' petition that one of the purposes of this proceeding is to obtain a judgment of this Honorable Court as to the constitutionality of the opinion and order of the Railroad Commission and the reasonableness and non-confiscatory character of the rate determined therein; and that plaintiffs herein are invoking the provisions of Article 6059, Revised Statutes of 1925, as a basis for their action in this respect. At the time this [fol. 54] proceeding was instituted on October 5, 1933, there was pending in the United States District Court for the Western District of Texas, Austin Division, a suit instituted by Lone Star Gas Company as complainant, against the parties plaintiff herein and others as defendants,

wherein an injunction was sought against the enforcement of the opinion and order of the Railroad Commission upon allegations of its unconstitutionality and unreasonable and confiscatory nature. Defendant says that the suit instituted by it in the United States District Court for the Western District of Texas, Austin Division, above referred to, was authorized and permitted by the will of the Legislature of the State of Texas, expressed in the provisions of Article 6059, Revised Statutes 1925, giving to any utility dissatisfied with any order of the Commission the right to file a petition setting forth the particular cause of objection in a court of competent jurisdiction in Travis County, against the Commission as defendant. Defendant says that the United States District Court for the Western District of Texas, at Austin, Texas, is a court of competent jurisdiction in Travis County, Texas; that its right to file the suit which it did file in the United States District Court for the Western District of Texas, at Austin, was expressly authorized by Article 6059 and by the Legislature.

Defendant says that this suit has for one of its purposes at least, the rendition of a judgment upholding the constitutionality, validity and reasonableness of the order of the Commission, all of which are alleged by plaintiffs; that these matters will be issues of fact and law involved herein [fol. 55] and are raised by plaintiffs' petition; that this suit was filed subsequent to the proceedings instituted by defendant in the United States District Court for the Western District of Texas, at Austin. That if plaintiffs are permitted to prosecute this proceeding, involving as it does, upon the allegations of plaintiffs' second amended original petition, the same questions of constitutionality, reasonableness and confiscation involved in the proceedings theretofore instituted in the United States District Court for the Western District of Texas, plaintiffs will be permitted to deprive this defendant of the right conferred upon it by law under the provisions of Article 6059, Revised Statutes 1925, to have these matters litigated and determined by a court of its choosing in Travis County, Texas, which in this particular instance was the United States District Court for the Western District of Texas.

Defendant says that none of the plaintiffs herein are given any right, power or authority by any constitutional or statutory provision of the State of Texas, nor is any right, power or authority inherent in them, as holders of

the public offices occupied by them, to maintain this proceeding or to invoke the jurisdiction of this court to determine the matter of the reasonableness, validity and constitutionality of the opinion and order of the Commission in question, or to require this defendant to litigate herein, contrary to its wishes, the matters which it elected to have litigated in another equally competent court in Travis [fol. 56] County, Texas, and to deprive it of the privilege of election conferred upon it in Article 6059.

Defendant says that none of the plaintiffs have any right or authority to maintain these proceedings against it, nor to abrogate by executive action the legislative will, as embodied in the provisions of Article 6059.

Wherefore, plaintiffs being without authority to maintain this proceeding, defendant prays that same be abated and that it have its costs.

* * * * *

[fol. 57] 8. It appears from plaintiffs' second amended original petition that plaintiffs, among other things, seek to perpetually and permanently enjoin defendant from charging or collecting any rates or charges for domestic and residential gas at the city gates of the various cities and towns served by it in intrastate commerce in this state except those particular rates and charges duly authorized and prescribed by order of the Railroad Commission of Texas. It does not sufficiently appear, however, whether plaintiffs are seeking to restrain defendant from charging rates in excess of those prescribed by the Commission for gas transported exclusively in intrastate commerce or whether plaintiffs seek to prevent defendant from charging any amount in excess of the rate prescribed by the Commission for gas delivered at the city gates of various towns and cities, even though part of the gas so delivered shall have moved and been transported in interstate commerce.

If the purpose of said suit, insofar as it seeks the equitable jurisdiction of this court is to prevent defendant from charging in excess of rates prescribed by the Commission for gas moving in intrastate commerce and not to prevent its charging rates in excess thereof for gas which is moved in interstate commerce, then defendant says that plaintiffs'

second amended original petition and the cause or causes of action therein set out should be abated because:

(a) The order of the Railroad Commission applies to all gas sold by defendant to all distributing companies [fol. 58] served by it, and fixes a rate of 32 cents per thousand cubic feet as the reasonable rate to be charged for all such gas; whereas the cause of action alleged in plaintiffs' second amended original petition seeks to prevent defendant from charging in excess of 32 cents for gas moving exclusively in intrastate commerce. The suit instituted by plaintiffs purports to be one in the nature of an appeal from the order of the Railroad Commission and the jurisdiction of this Court is invoked by virtue of the provisions of Article 6059, and those provisions alone. It does not appear from the order of the Railroad Commission that the said Commission investigated or undertook to investigate the reasonableness of the charge to be made and collected by defendant for gas moving exclusively in intrastate commerce, nor does it appear that the said Commission would have adopted the said order if, in fact, it had known that it had no jurisdiction or authority to fix and determine rates for all of the gas sold and delivered by defendant.

Therefore, inasmuch as a part of the gas so sold and delivered by defendant moves in interstate commerce from and through the State of Oklahoma into the State of Texas, and up to the city gates of various towns and cities, it is apparent that the purpose of the suit now sought to be maintained by plaintiffs in their second amended original petition involves issues of fact not involved in the investigation of the Railroad Commission and made the basis of its order, and that the purpose of plaintiffs' suit is to secure in the first instance a judgment of this Court determining [fol. 59] that 32 cents per thousand cubic feet for intrastate gas is reasonable, and to secure such a judgment in advance of any investigation of the reasonableness of said rates by the Commission or of an order of the Commission finding the same to be reasonable, and thus, to seek a judgment of this Court in what purports to be an appeal from the order of the Commission, determining in the first instance and acting legislatively, that 32 cents per thousand cubic feet is a reasonable rate for gas moving in intrastate commerce. This Honorable Court has no jurisdiction to fix rates in the first instance, and since it appears, in fact, that

this suit is not an appeal from the order of the Railroad Commission, and is not predicated thereon, same cannot be maintained at this time, if at all, and has been prematurely brought..

(b) It appears from the statement of the Railroad Commission of Texas attached to the opinion and order of the said Commission, marked Exhibit "A", and referred-to in plaintiffs' second amended original petition, that Lone Star Gas Company is engaged in the production, transportation and sale at wholesale of natural gas, engaging in both interstate and intrastate commerce in the sale of gas to some 300 cities and towns in the States of Oklahoma and Texas. The order of the Commission undertakes to fix a reasonable rate for all of the gas supplied by Lone Star Gas Company to distributing companies. Defendant is engaged in transporting, selling at wholesale and delivering in interstate commerce, natural gas at the city gates of various towns and cities. The gas so delivered by defendant at the city gates of the said towns and cities was, at the time of the [fol. 60] investigation of the Railroad Commission and the entry of its order, and is now, being transported uninterruptedly through defendant's high pressure pipe lines from the State of Oklahoma into the State of Texas. The business of transporting natural gas uninterruptedly through defendant's high pressure pipe lines from the State of Oklahoma into the State of Texas and from the State of Texas through Oklahoma and back into the State of Texas is national in character and constitutes interstate commerce and transportation and also constitutes a substantial portion of defendant's entire natural gas business. Defendant says that the order of the Railroad Commission was intended to and does, in fact, prescribe the rate to be charged for all gas sold by it, including interstate gas, and, thereby, prevents it from charging and receiving the price for interstate gas which it now charges and receives, and, therefore, is a burden upon, and a direct regulation of interstate commerce; that the order of the Commission is void insofar as it relates to interstate commerce, and gas sold by defendant moving in interstate commerce under the Commerce Clause of the Federal Constitution, and, being void in part, and being indivisible in character, it is void in its entirety, and cannot be enforced in whole or in part.

None of the plaintiffs herein are given any right, power or authority by law to enforce or bring any proceedings looking to the enforcement of a void order of the Commission.

Wherefore, defendant says that plaintiffs herein have no power or authority to maintain this proceeding, nor are they the proper parties to maintain the same, and it prays [fols. 61-62] that this cause be abated and that it have its costs.

.

[fol. 63] 11. There is no statutory authority for the maintenance of a proceeding of the kind and character instituted therein. Nowhere in the Constitution or statutes of the State of Texas are there any provisions guaranteeing [fol. 64] to defendant, that upon a trial of the cause, involving as it does, upon the basis of the allegations contained in plaintiffs' second amended original petition, the question of the reasonableness and constitutionality of the opinion and order of the Commission, it will receive and will be entitled to the independent judgment of this Honorable Court, and the appellate courts of the State of Texas on the law and facts involved in such determination, a right preserved in the Constitution of the United States; nor that it will receive, or is entitled to demand the sort of hearing necessary to constitute due process under the Fourteenth Amendment to the Constitution of the United States.

Defendant says that it is entitled to have the matter of its rights in these respects determined by law in advance of a trial herein, and that it should not be compelled to proceed to a trial herein involving as it does, among other things, its rights under the Constitution of the United States, until and unless the Legislature by appropriate enactment, outlines the procedure to be followed in cases of this character guaranteeing to it in advance of any trial, that it will receive and will be entitled to demand the independent judgment of this Honorable Court and the appellate courts of this state on the questions of fact and law involved in the matter of the constitutionality and reasonableness of the opinion and order of the Railroad Commission. Defendant says that to compel it to go to trial at this time, in the absence of a definite and certain procedure guaranteeing to it due process of law, would amount to a violation

[fol. 65] of its constitutional rights under the due process clause of the Fourteenth Amendment, and that to avoid the violation of the same it is necessary and appropriate that this action be abated and that it have its costs.

Lone Star Gas Company, by Karl F. Griffith, Thompson & Barwise, Ben H. Powell, Roy C. Coffee, Marshall Newcomb, Its Solicitors.

THE STATE OF TEXAS,
County of Dallas:

Before me, a Notary Public in and for Dallas County, Texas, on this day personally appeared Karl F. Griffith, who being by me first duly sworn, deposes and says that he is Vice-President of Lone Star Gas Company, defendant herein; that he has read the foregoing pleas in abatement and knows the contents thereof; and that the matters of fact therein stated are true and correct.

Karl F. Griffith.

Subscribed and sworn to before me this 29th day of May, 1934. Mrs. Treva P. Leverton, Notary Public in and for Dallas County, Texas. (Seal.)

[fols. 66-71] Without waiving any of its pleas hereinbefore set out, but still insisting on the same and subject to the same and the action of the court thereon, defendant would respectfully show the court as follows:

C

[fol. 72] 9. Defendant demurs and excepts to plaintiffs' second amended original petition, and says that the same is insufficient in law and in equity to support a judgment of this Honorable Court enjoining it in the particulars set out therein for the reason that it appears from the opinion and order of the Railroad Commission, and the statement attached thereto, that the said order of the Commission was intended to, and does apply to natural gas sold by defendant in interstate commerce, and fixes and prescribes a rate to be charged therefore, said gas being a part of the gas sold and delivered by the defendant, and the order of the Railroad Commission applying to all gas delivered by defendant to all distributing companies. That the said order, insofar as

it was intended to and does apply to and include gas moving in interstate commerce, is void as in violation of the Commerce Clause of the Constitution of the United States. That said order is indivisible and is, therefore, void in its entirety and, hence, cannot be made the basis of plaintiffs' said suit, and a suit based thereon wholly fails to state a cause of action against defendant or to justify or warrant or permit the relief sought in plaintiffs' second amended original petition.

[fol. 73] Wherefore, defendant says that this demurrer and exception should be sustained, and of the same it prays judgment of the court.

D

Subject to and without waiving its demurrers and exceptions [fols. 74-113] above set forth.

[fol. 114] 28. Defendant specially excepts to that portion of the first paragraph in plaintiffs' prayer, contained on page 15 of their second amended original petition, wherein it is alleged that,

"Defendant be permanently and perpetually enjoined and restrained from charging or collecting any rates or charges for domestic and residential gas at the city gates of the various cities and towns served by it in intrastate commerce in this state,"

because—

(a) Said allegation is equivocal in that it does not sufficiently appear whether it is the purpose of this suit, as stated in said allegation, to restrain defendant from charging [fol. 115] ing in excess of 32 cents per thousand cubic feet for gas delivered at the city gate, where all of the gas so delivered moves in intrastate commerce exclusively, or whether it is the purpose of the plaintiffs to prevent defendant from charging in excess of 32 cents for all gas delivered at the various city gates receiving in part intrastate gas, even though a part of the entire amount of gas delivered at said city gates moves continually in intrastate commerce;

that defendant is legally entitled to be advised as to the scope and purport of plaintiffs' said suit, and the kind and character and extent of the relief asked against it; that it is not able to determine from said allegation what relief plaintiffs seek and what relief plaintiffs will be entitled to if they maintain their said suit, and defendant should be advised and is entitled to be advised in these particulars prior to going to trial in said cause.

Wherefore, defendant prays that plaintiffs be required to amend so as to make it clearly appear in their said prayer what relief they seek, and so as to make it possible for defendant to ascertain with certainty whether plaintiffs seek to maintain their suit simply insofar as they allege that the order of the Commission has application to gas moving exclusively in intrastate commerce, or whether they are undertaking to maintain the same as to gas moving in interstate and intrastate commerce, wherever such gases are mixed, and wherever a particular city or town is served in part with intrastate gas, although it may also be served in part with gas moving in interstate commerce.

[fol. 116] (b) Said allegation is so vague and indefinite and uncertain as not to appraise defendant in advance of the trial of this cause as to the kind and character of proof that will be offered by the plaintiffs upon a trial of the same. In this connection, defendant says that it appears from Exhibit "A" attached to plaintiffs' petition, said exhibit being the opinion and order of the Railroad Commission, that the Railroad Commission fixed 32 cents as a reasonable rate for gas by considering the value of defendant's properties located in Texas and Oklahoma, and gross revenues from the sale of all gas, as well as expenses in connection with the conduct of its interstate as well as intrastate business; that if plaintiffs now seek to maintain this suit and to sustain a rate of 32 cents for gas moving exclusively in intrastate commerce, as just and reasonable, the questions involved in such a determination will be different from those investigated by the Railroad Commission in its opinion and order, and the question of the reasonableness of the said rate as to gas moving exclusively in intrastate commerce may depend upon proof of an entirely different kind and character from that offered in the Railroad Commission's investigation and considered by it. Defendant is entitled to be appraised in advance of the

trial of this cause of the kind and character of proof which will be offered by plaintiffs in support of its prayer that defendant be enjoined from collecting rates in excess of those fixed by the Railroad Commission of Texas for gas delivered at the City gates of various towns and cities served by the defendant in intrastate commerce, and that [fols. 117-118] it must be apprised of plaintiffs' intention in this respect, in order that it may properly prepare for trial and properly prepare to meet the issues raised by plaintiffs' pleadings, whatever they may be.

Wherefore, defendant prays that plaintiffs be required to amend and make their said prayer more definite, and certain, in the particulars aforesaid, and of this exception defendant prays judgment of the court.

* * * * *

[fol. 119]

E.

Subject to its pleas, demurrers and exceptions hereinbefore set out, without waiving the same but still insisting on the same, and answering herein only if required:

1. Defendant denies generally each and every allegation contained in plaintiffs' second amended original petition and demands a strict proof of the same.

Answering further, if required, defendant, Lone Star Gas Company, pleads the following facts defensively to the purported cause or causes of action set out in plaintiffs' second amended original petition and the relief prayed for therein, and as the basis for affirmative relief hereinafter prayed by it against each and all of the plaintiffs individually and in their official capacities:

2. For more than fifteen (15) years prior to the filing of this suit the defendant has owned and operated a system of pipe lines and appurtenant equipment located in the States of Oklahoma and Texas, and during all of that time has been engaged in the production, purchase, transportation and sale of natural gas in interstate commerce in said States as a continuous and established business. From time to time and ever since its incorporation on June 4, 1909, and down to the time of the filing of this suit, additional supplies of gas being necessary for the conduct of the defendant's business, defendant has caused to be purchased in the

States of Texas and Oklahoma gas leases and gas rights and has caused to be constructed at great expense numerous pipe lines connecting its sources of gas supply in the States of Texas and Oklahoma with the markets which it serves in interstate commerce in the States of Texas and Oklahoma. [fol. 120] Defendant is engaged in the purchase, production, transportation and sale of natural gas from approximately four thousand (4,000) miles of integrated pipe line system in Texas and Oklahoma to natural gas distributing companies doing business in the two said States, and which said natural gas distributing companies serve more than two hundred thousand (200,000) customers in the State of Texas, representing a population of more than one million people. Defendant supplies natural gas at wholesale and for domestic purposes to the said distributing companies at the city gates of more than two hundred seventy-five (275) towns, cities and communities in the States of Oklahoma and Texas, at a uniform price of forty cents (40¢) per one thousand (1,000) cubic feet, with negligible exceptions necessitated by long term contracts. By virtue of its said contracts with the several distributing companies, the defendant has been engaged continuously, and is now engaged in transporting, selling at wholesale and delivering through its pipe lines in interstate commerce natural gas for domestic purposes in substantial amounts at the city gates of the following towns and cities in the State of Texas, to-wit: Dallas, Gainesville, Sherman, Wichita Falls, Denison, Denton, McKinney, Vernon, Bonham, and many others. The gas so delivered by defendant at the city gates of said [fol. 121] towns and cities has been and is now being transported uninterruptedly through defendant's high pressure pipe lines extending from the State of Oklahoma into the State of Texas.

3. That on or about the 14th day of October, 1932, the Railroad Commission of Texas ordered an investigation of the reasonableness of the rates and charges of the Lone Star Gas Company for natural gas sold and delivered at the city gates of the several towns and cities in the State of Texas where defendant was selling gas at wholesale, and set said cause or investigation for a hearing on November 1, 1932. Said cause was and is known as Gas Utilities Docket No. 75, before the Railroad Commission of Texas.

The hearings in said investigation before the said Commission were held from time to time, and evidence and exhibits were introduced to show that the contracts between the defendant and the various distributing companies, and under which contracts the defendant sells natural gas to the said distributing companies at the city gate, were reasonable and were contracts such as would be made by persons dealing at arm's length; that the rate or price of forty cents (40¢) per one thousand (1,000) cubic feet, which the defendant charges to the various distributing companies for natural gas delivered for domestic purposes at the city gates of the towns and cities served in the State of Texas by the defendant's pipe line system, was fair and reasonable; that the fair value of the property of the defendant used or useful in the business of supplying natural gas to the various distributing companies receiving gas at the city gate from the defendant was more than Seventy Million (\$70,000,000.00) Dollars; that a fair minimum allowance for depreciation, depletion and amortization reserve [fol. 122] charge was more than Three Million, Four Hundred Thousand and 00/100 (\$3,400,000.00) Dollars per annum; that the fair and reasonable annual net return which the defendant should be permitted to earn under rates imposed upon it by public authority was not less than ten per cent (10%) of the present fair value of its said properties used and useful in the public service after deducting operating expenses of every kind and character, including a proper allowance for depreciation, depletion and other reserves.

Defendant further shows that in the conduct of said investigation, and in the opinion and order, "Exhibit A" to plaintiffs' second amended original petition, the Railroad Commission of Texas considered and evaluated defendant's public service property in the States of Oklahoma and Texas as an integrated whole and made no effort to distinguish as between defendant's Oklahoma and Texas property and likewise did not differentiate as between the revenues and expenses of defendant arising in Texas and Oklahoma, or as between the interstate or intrastate public service business of defendant; and that said opinion and order, as more fully appears therefrom, are not based upon any segregation of defendant's public service property, revenues, or expenses in relation to the business of defendant against which said order is sought to be enforced in this proceeding.

4. That on or about the 13th day of September, 1933, the Railroad Commission of Texas handed down an order, accompanied by an opinion, in Gas Utilities Docket No. 75 before the Railroad Commission of Texas, heretofore identified as "Exhibit A" to plaintiffs' second amended original petition; that in this order, together with the accompanying [fol. 123] opinion, the Railroad Commission of Texas purported to find that the price of forty cents (40¢) per one thousand (1,000) cubic feet for domestic gas sold by the defendant to the various distributing companies was excessive and unreasonable; that said charge was excessive in the amount of eight cents (8¢) per one thousand (1,000) cubic feet; that thirty-two cents (32¢) is a reasonable price for defendant to receive for such gas; and said order in effect, commanded and decreed that the defendant, Lone Star Gas Company, should thereafter ignore its contracts with the said distributing companies, who were not parties to said investigation and hearing, and make no charge to them and receive no payments from them for domestic gas transported and delivered by it at a rate, price, or charge in excess of thirty-two cents (32¢) per one thousand (1,000) cubic feet.

Defendant shows that the Railroad Commission of Texas is the final legislative and administrative Board of Commission to which defendant may appeal, and no other legislative or administrative board, commission, body or agency of the State of Texas is authorized to supersede the rate, price or charge of the defendant as fixed by the Railroad Commission of Texas, and to establish fair, reasonable and compensatory rates in lieu thereof. Therefore, that the legislative remedy of this defendant to prevent the confiscation of its property under the said order of the Railroad Commission was exhausted upon the entry of the aforesaid order.

5. Defendant shows that subsequent to the promulgation of the opinion and order of the Railroad Commission, and on the 22nd day of September, 1933, it filed suit in the District Court of the United States for the Western District of Texas, Austin Division, against the individuals named [fol. 124] herein as parties plaintiff, and the Railroad Commission of Texas, which suit is styled Lone Star Gas Company vs. The Railroad Commission of Texas, et al., No. 467 in Equity, and said court upon the filing of a bond as required by law, issued a temporary restraining order en-

joining and restraining the members of the Railroad Commission of Texas, and the individual plaintiffs herein, from compelling or attempting to compel defendant to observe the said order of the Commission, and from compelling or attempting to compel defendant to charge the thirty-two cents (32¢) rate prescribed in such opinion and order.

On October 5, 1933, plaintiffs filed their original petition in this case in the Fifty-third Judicial District of Travis County, Texas, seeking to enjoin and restrain defendant in the particulars therein set out. Thereafter, and on or prior to November 11, 1933, the individual plaintiffs herein as defendants in the suit filed by Lone Star Gas Company against them and other parties, pending in the United States District Court for the Western District of Texas, Austin Division, filed in said United States district Court their motion to stay proceedings therein pursuant to provisions of Section 266 of the Judicial Code, Article 380, United States Code Annotated. On November 11, 1933, court of three United States Judges in said cause entered its order enjoining the members of the Railroad Commission and the Attorney General of the State of Texas, plaintiffs here, from enforcing or attempting to enforce the said order of the Commission until final judgment in this cause and staying proceedings in the suit filed by Lone Star Gas Company in the United States District Court against the individual plaintiffs herein, and others, pending final determination of this case.

[fol. 125] To the action of the said United States Court in staying proceedings instituted therein by defendant and in relegating defendant to this court for a trial of the matters involved in the said suit defendant excepted; and this its Amended answer herein is filed subject to its said exception, as well as its pleas, demurrers and exceptions heretofore filed herein, and in pleading the facts hereinbefore and hereinafter stated, defendant says that it does not waive, and does not intend to waive, but is still insisting upon its right to the trial of the issues raised by plaintiffs' said petition herein, and by its answer, in the United States District Court for the Western District of Texas, Austin Division, in Cause No. 467 in Equity, filed by it as Complainant against the individual plaintiffs herein and others as defendants.

6. Defendant shows that the opinion and order of the Railroad Commission of Texas, said opinion and order being

"Exhibit A" attached to the plaintiffs' said petition, found a reproduction cost, new, as of December 31, 1931, for Transmission and Production properties, exclusive of leaseholds, of Forty-four Million, Six Hundred Six Thousand, Three Hundred Thirty-seven & 16/100 (\$44,606,337.16) Dollars; a fair value of leaseholds as of December 31, 1931, of One Million, Nine Hundred Ninety-one Thousand, Six Hundred Thirteen & 92/100 (\$1,991,613.92) Dollars, and a "rate base" of Forty-six Million, Two Hundred Forty-six Thousand, Six Hundred Seventeen & 53/100 (\$46,246,617.53) Dollars to cover defendant's public service property used and useful in connection with its business of purchasing, transporting, selling and delivering natural gas in interstate and intrastate commerce. Said rate base so found by the Railroad Commission of Texas was at least Twenty-three Million & 00/100 (\$23,000,000.00) Dollars lower than the fair [fol. 126] and reasonable value of said property as of December 31, 1931, January 1, 1933, September 13, 1933, and now, and the method adopted, and the results reached by the Railroad Commission of Texas were erroneous and contrary to the well established rules of law in that, among other things;

(a) The said Commission completely disregarded and ignored the actual cost of defendant's public service property as reflected by its books, in the approximate amount of Fifty Million (\$50,000,000.00) Dollars, which, in view of recent increases in the cost of steel pipe, and the upward trend of prices generally and particularly applicable to materials going into and comprising defendant's public service property, represented at least a minimum value of the property and elements of value included therein;

(b) The said Commission grossly under-estimated the true present reproduction cost of the public service property of the defendant and the items of property which the Commission included in its reproduction cost estimate, in that, among other things, it entirely disregarded and ignored substantial increases in the cost of steel pipe comprising by far the greater part of the value of the physical property included in the Commission's estimate;

(c) The said Commission, as is disclosed by its order and opinion, "Exhibit A" attached to plaintiffs' second amended original petition, arbitrarily and capriciously eliminated

from its so-called determination of a rate base numerous items of physical property which were and are both used and useful by the defendant in its public service business, some [fol. 127] of the items so eliminated by the Commission being as wells and gas leaseholds, and other property owned by the defendant and located in what is known as the Petrolia Field, and actually used and useful in the best judgment of the management of the defendant in connection with defendant's public service business, the actual cost of said properties in the aggregate amounting to Six Hundred Eighty-Seven Thousand, Seven Hundred Eighty-one & 13/100 (\$687,781.13) Dollars; and furthermore the said Commission arbitrarily and capriciously eliminated from its so-called rate base, and contrary to the undisputed testimony in said investigation, net capital additions to the public service property of defendant in the calendar year of 1932, which net capital additions had an actual cost to defendant of Two Million, Two Hundred Fifty-seven Thousand, Six Hundred Eighty-two & 07/100 Dollars (\$2,257,682.07);

(d) The said Commission wholly failed and refused to include in its so-called "rate base" as reflected by the order and opinion, "Exhibit A" attached to plaintiffs' second amended original petition, any amount to cover that element of value actually present in and constituting a part of defendant's public service property, known and referred to as "going concern value" or value resulting from the business which the defendant has developed and which it now has;

(e) The said Commission, as disclosed by its order and opinion, in stating the net income of the defendant which would be available for return under the present city gate rate of forty cents (40¢) per one thousand (1,000) cubic feet, [fol. 128] and under the thirty-two cent city gate rate made mandatory by the aforesaid order, improperly computed the net income of the defendant from its public service property for the calendar year of 1931, improperly and arbitrarily disallowed necessary operating expenses actually incurred in the amount of Two Hundred Seventeen Thousand, Eight Hundred Eighty-four & 05/100 (\$217,884.05) Dollars for the calendar year of 1931, and also wholly and improperly disregarded as an operating expense the Federal income taxes which were payable for said year. In this connection, defendant would show that all of the operating expenses incurred by the defendant and reflected by its books for the

calendar year of 1931, and all other periods herein, were incurred in the exercise of good faith and reflected the best judgment of the management of the defendant.

(f) The Railroad Commission of Texas, in its said order and opinion, in computing the most available to defendant for return on its public service property, allowed only the grossly inadequate sum of Nine Hundred Sixty-eight Thousand, Sixty-six & 98/100 (\$968,066.98) Dollars, or less than two per cent (2%) of the actual cost of the defendant's public service property, as an annual depreciation charge; whereas, there was no competent testimony of any kind or character introduced in said investigation before the Railroad Commission of Texas upon which such a determination could have been made.

(g) Said order and opinion does not and will not in the future permit a fair return to the defendant upon its property used and useful in the public service and in the supplying of natural gas service to the various distributing companies receiving their natural gas supply wholesale at the city gate from this defendant. Said order, together with the accompanying opinion upon which said order purports to be based, does, in fact, and its effect will be (1) to restrict the "rate base" to approximately sixty-six per cent (66%) of the true value of the defendant's said property; (2) to exaggerate the net earnings of the defendant and to make said net earnings appear to be in excess of defendant's true net earnings; and (3) to restrict the return yielded by such fictitious net earnings upon said insufficient and improper rate base to the wholly inadequate and confiscatory rate of six per cent (6%) per annum. In this connection, defendant shows that the minimum return which has been generally allowed in this territory to other public utilities of a less hazardous nature is eight per cent (8%) per annum.

(h) The aforesaid order of the Railroad Commission of Texas, in determining the gross and net revenues of the defendant for the purpose of calculating the rates for domestic gas to be charged at the city gate by the defendant, has erroneously and improperly disregarded the decline in gross and net revenues of the defendant for the calendar years of 1931 and 1932, and for the twelve months ended April 30, 1933, in spite of the fact that the volume of business of the defendant and the trend of its annual earnings [fol. 130] have been continuously downward since the year

1929, and all of which was made manifest in the investigation and hearing by the said Commission.

Specifically, the defendant would show that if the said order, "Exhibit A" attached to plaintiffs' second amended original petition, had been effective continuously during the year of 1932 on all of its sales of domestic gas at the city gates of the towns and cities supplied by its integrated pipe line system in the States of Oklahoma and Texas, then (1) using the actual public service revenues and operating expenses of the defendant for the calendar year of 1932, and (2) using the rate base of Forty-six Million, Two Hundred Forty-six Thousand, Six Hundred Seventeen & 53/100 (\$46,246,617.53) Dollars, and (3) using the depreciation allowance of Nine Hundred Sixty-eight Thousand, Sixty-six & 98/100 (\$968,066.98) Dollars, as allowed by the said opinion and order, the net amount available for return to defendant would have been only Two Million, Four Hundred Eighty-four Thousand, Five Hundred Twelve & 41/100 (\$2,484,512.41) Dollars, or only five and thirty-seven one-hundredths (5.37%) per cent upon said rate base or property value and, similarly, the net amount available for return for the twelve months ended June 30, 1933, would have been Two Million, Three Hundred Sixty-two Thousand, Eight Hundred Seventy two & 09/100 (\$2,362,872.09) Dollars, or only five and eleven-one-hundredths (5.11%) per cent upon said rate base or property value, whereas by the said order and opinion, it was determined that six per cent (6%) per annum was the minimum annual net return which defendant was entitled to receive.

7. The public service business of the defendant has been conducted efficiently and economically during all of the times herein referred to, and is now being so conducted. In truth [fol. 131] and in fact the operating expenses of the defendant for the past three (3) years have been unusually low and will tend to materially increase in the future. Defendant shows that it has subscribed to and complied with the employment agreement of the President of the United States, as modified for the natural gas industry, all as pursuant to the National Industrial Recovery Act, and that the effect thereof, due to the shortening of labor hours and increases in wages and salaries, will be to add not less than Two Hundred and Fifty Thousand Dollars (\$250,000.00) per annum

to the inescapable operating expenses in connection with the public service business of the defendant.

8. Defendant shows that the present fair value of its property used and useful in the business of supplying natural gas to the natural gas distributing companies receiving gas at the city gate from the defendant, was at the time of the hearing before the Railroad Commission, and is now, more than Seventy Million *Dollars* (\$70,000,000.00) Dollars; that a sum not less than Three Million, Four Hundred Thousand Dollars (\$3,400,000.00) is a fair minimum annual allowance for a depreciation, depletion and amortization reserve charge; that a fair and reasonable annual net return which it should be permitted to earn, considering the hazards of the natural gas business, the rate of return of other utilities of a less hazardous nature, the return necessary to attract a free flow of capital for investment in the enterprise and to insure the financial soundness of the defendant, is not less than ten per cent (10%) of the present fair value of its public service properties after deducting operating expenses and an annual allowance for depreciation, depletion and other proper reserves.

[fol. 132] Defendant further shows that the net amount available for depreciation, depletion, amortization, Federal income tax and return on said value of its public service properties for the year ended December 31, 1931, at the prevailing rate of forty cents (40¢) per one thousand (1,000) cubic feet for domestic gas was only Four Million, Nine Hundred Eight Thousand, Twenty-four & 24/100 (\$4,908,024.24) Dollars, or approximately seven per cent (7%) on said rate base; and that deducting Federal income taxes and the sum of Three Million, Four Hundred Thousand & 00/100 (\$3,400,000.00) Dollars as the fair and reasonable allowance for depreciation, depletion and amortization for the year ending December 31, 1931, leaves for net return less than two per cent (2%) on said rate base or fair value.

9. Defendant would show that it has devoted and dedicated to, and used and useful in the business of supplying natural gas and natural gas service to the towns and cities in the States of Oklahoma and Texas, which towns and cities it supplies with natural gas at the city gates, properties of the actual cash cost, as reflected by its books on December 31, 1932, of Fifty Million, Thirty-four Thousand, Four Hun-

dred Thirty-one & 70/100 (\$50,034,431.70) Dollars, and that the cost of its public service property as reflected by its books is less than the true value thereof for the reason that in the twenty-four (24) years of its corporate existence it has not been its general policy to capitalize engineering and supervisory costs, administrative and legal expenses and taxes and interest during construction. The said cost of Fifty Million, Thirty-four Thousand, Four Hundred Thirty-one & 70/100 Dollars, (\$50,034,431.70), which the books of the defendant reflect as the cost of its public service properties on December 31, 1932, does not include materials [fol. 133] and supplies on hand and used and useful in the public service business of the defendant, nor does it include cash working capital requirements of the defendant necessary in the conduct of its public service business, nor does it include going concern value. In this connection, defendant would show that for the year ended December 31, 1932, the net amount available for depreciation, depletion and amortization and return on its public service properties was Four Million, Six Hundred Fifty-eight Thousand, Five Hundred Six & 46/100 (\$4,658,506.46) Dollars, or only nine and thirty-one-one-hundredths (9.31) per cent of the actual cost of the properties reflected by the books of the defendant on December 31, 1932.

Also, defendant would show that the actual cost to the defendant of its public service properties as reflected by its books on June 30, 1933, was Forty-nine Million, Nine Hundred Twenty-three Thousand, One Hundred Thirty-seven & 26/100 (\$49,923,137.26) Dollars, and that for the twelve (12) months ended June 30, 1933, the net amount available for depreciation, depletion, amortization and return on said public service property was Four Million, Four Hundred Ninety-one Thousand, Eight Hundred Twenty-five & 06/100 (\$4,491,825.06) Dollars, or only eight and ninety-nine one-hundredths (8.99) per cent of the said book cost.

10. Defendant says that the said order is unconstitutional, null and void, and is in excess of the authority conferred or that could be conferred by law upon the Railroad Commission of the State of Texas, in that:

(a) The said Railroad Commission and the plaintiff members thereof, in the investigation of the contracts between defendant and the various distributing companies for the supply of gas at the city gates of the respective communi-

[fol. 134] ties served by the said distributing companies and the reasonableness of the price or rate charged by defendant under the aforesaid contracts, approached all questions involving the same as if it had power and jurisdiction under the law to fix the rates and commodity charges of the defendant, and intended to and has, in effect, undertaken to fix the rates and commodity charges of the defendant in relation to all of its business including its interstate business; and the intent and effect of the said opinion and order and the enforcement thereof by the said Railroad Commission and the plaintiffs herein is and will be to usurp the power to regulate and burden interstate commerce, and thereby the said Commission has acted wholly without constitutional or lawful authority, power or jurisdiction;

(b). The Railroad Commission of Texas is a creature of the Legislature of the State of Texas, deriving its powers from the Statutes of the State of Texas, which, likewise, limit the exercise of the same; that such right, power and authority as is given to the Railroad Commission of Texas by Statute to investigate the reasonableness of the rate charged by defendant for the sale and delivery of domestic gas, at wholesale at the city gates, to the various distributing companies is conferred by the provisions of Article 6053, Revised Statutes of Texas, 1925; that if the aforesaid Article purports and was intended to confer upon the Railroad Commission of Texas the power and authority to fix, establish and enforce the adequate and reasonable price of natural gas, and reasonable rates and charges for transporting, producing, distributing, buying, selling and delivering [fol. 135] gas moving uninterruptedly in high pressure pipe lines running from outside the State of Texas into the State of Texas, and constituting and being a part of interstate transportation and interstate commerce, then the said Statute under which the Railroad Commission of Texas purported to act in enetering the order, "Exhibit A" to the plaintiffs' second amended original petition, is void as being in contravention of the commerce clause of the Constitution of the United States. That if the said Statute should be construed as not conferring, or having been intended to confer upon the Railroad Commission of Texas the power of fixing and establishing rates and prices for natural gas moving continuously from outside the State of Texas into

the State of Texas in high pressure pipe lines, such movement, transportation and sale being a part of interstate commerce, then the Railroad Commission of Texas, in entering the order which it has entered in this case has exceeded the power and authority conferred upon it by law, and has usurped a power not conferred upon it by law, for which reason the order herein attacked is unconstitutional, null and void.

(c) A substantial portion of the natural gas purchased by the various distributing companies respectively at the respective city gates of the various communities served by them is natural gas transported by defendant in interstate commerce, national in its character, and defendant is lawfully entitled to sell said gas to the several distributing companies herein and to other purchasers in the State of [fol. 136] Texas and Oklahoma without interference by the Railroad Commission of Texas, and the said opinion and order of the Railroad Commission of Texas, unlawfully deprives the defendant of the benefits and advantages of its ownership of said gas and said pipe line system and the fruits of its said interstate transportation, and unlawfully denies to defendant the free right to sell from its transportation system its natural gas so continuously transported in interstate commerce and unlawfully deprives defendant of the rights guaranteed to it by Article 1, Section 8, Clause 3 of the Constitution of the United States, and imposes upon defendant an unreasonable regulation, and places an undue and direct burden upon, and constitutes a direct interference with interstate commerce. Defendant further shows that any attempted enforcement of said order in respect of defendant's intrastate business only, would operate to discriminate against and impose an undue and direct burden upon the interstate business of the defendant, and would be violative of defendant's rights under the Constitution of the United States.

* * * * *

(e) The said opinion and order are in violation of the Fourteenth Amendment to the Constitution of the United States, in that they deprive the defendant of its property [fol. 137] without due process of law, destroy its freedom of contract, and deny to it the equal protection of the laws.

(f) The said order of the Railroad Commission of Texas requiring defendant to charge and collect for domestic gas delivered by it to the various distributing companies thirty-two cents (32¢) per one thousand (1,000) cubic feet, and denying to it the right to charge an amount in excess thereof, fixes a rate, charge and price that would not produce a reasonable return on the present fair value of the public service properties of the defendant, used and useful in furnishing its intrastate as well as intrastate gas service to the various distributing companies and others, and if the defendant were required to deliver gas to the said distributing companies at the rate of thirty-two cents (32¢) per one thousand (1,000) cubic feet, as prescribed by the Railroad Commission, the result would be that the defendant's public service properties would be confiscated, and it would be deprived of its properties without due process of law, all in violation of the Fourteenth Amendment to the Constitution of the United States.

(g) The defendant in the sale of the natural gas transported by it in and through its pipe line system in the States of Texas and Oklahoma, is limited to the markets connected with its transportation system as now located, and if the said orders of the Railroad Commission are enforced, the result will be that defendant will be deprived of all markets for its domestic gas at rates and charges other than those attempted to be established by the said [fol. 138] Railroad Commission in its opinion and order, and defendant will be deprived of the right to carry on its business, and will be deprived of its property without due process of law, all in violation of the Fourteenth Amendment and the Commerce Clause of the Constitution of the United States.

(h) In refusing to include in the rate base of the defendant and in a determination of the present value of its public service property, as more fully appears in said order and opinion, certain items of property used and useful by the defendant in its public service business, and in excluding from operating expenses, expenses actually and normally incurred by the defendant in the conduct of its said business, and in the exercise of the best judgment of its officers and directors, the Railroad Commission of Texas unlawfully and unreasonably usurped the prerogatives, duties and

authority of the officers and directors of the defendant upon whom rests the responsibility for the management of the defendant's business; all in violation of the rights of the defendant under the Constitution of the United States, and with the result that, to the extent of such arbitrary deductions, defendant is deprived of its property devoted to public use without due process of law, and its property is confiscated, contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States.

(i) The said order of the Railroad Commission of Texas is void and in excess of the authority conferred by law upon [fol. 139] the said Commission in that it deprives defendant of an opportunity to have a judicial determination as to the legality of its contracts and charges to each of the various distributing companies, by arbitrarily requiring the defendant to reduce its charges for its gas to each of the various distributing companies, irrespective of whether such charges be finally sustained as legal or not; and the said order further on this account seeks to deprive, and does deprive, the defendant of its property and business without due process of law and denies defendant the equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States.

(j) The said opinion and order were entered and promulgated by the Railroad Commission of Texas and the members thereof, with the intent and purpose of fixing the city gate price which defendant could charge all distributing companies for all domestic gas transported and sold by defendant, whether in interstate or intrastate commerce. That said order in respect of defendant's interstate business is void, as being violative of the Commerce Clause of the Constitution of the United States; and that said order being void in part and indivisible, is therefore void in its entirety, and is not capable of being enforced against the defendant in respect of its intrastate business only.

[fol. 140] 11. Each and every one of said contracts between the defendant and the various distributing companies providing for the sale by the defendant and purchase by the said distributing companies of natural gas for domestic purposes at the city gates of the several towns and cities in the State of Texas, are affected by the opinion and order of the Railroad Commission.

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[fol. 141] Defendant represents that with respect to its public service business, its sales of gas for industrial purposes, and all purposes other than for domestic use, are profitable to it, in that such sales produce substantial net revenues over and above the costs of making such sales. Industrial gas is sold in open market competition with other fuels and it is not possible for defendant to increase its net earnings by increasing its rates and charges for industrial gas or for gas sold for other than domestic purposes.

12. Defendant says that for each and every one of the reasons aforesaid, the rate or price that the said order of the Railroad Commission of Texas requires it to charge the various distributing companies for natural gas furnished by it to them is confiscatory of its property used or useful in the public service and in furnishing natural gas to the said distributing companies; and the promulgation and enforcement of said order necessarily will deprive defendant of its property devoted to public service and used and useful therein, without due process of law, will deny to defendant the equal protection of law, and will directly and substantially interfere with the business of the defendant and its right to engage in interstate commerce free from such direct and substantial interference, all in violation of its rights under the Constitution of the United States, and specifically in violation and contravention of the Fourteenth Amendment, Section 10 of Article 1, and Section 8 of Article 1 of the Constitution of the United States. Therefore, said opinion and order of the Railroad Commission are null and void and unenforceable.

[fol. 142] Wherefore, defendant prays as follows:

First, that the rate charge and price of thirty-two (32¢) cents per one thousand (1,000) cubic feet for domestic gas as fixed and prescribed in the opinion and order of the Railroad Commission of Texas, dated September 13, 1933, "Exhibit A" attached to plaintiffs' second amended original petition, be decreed to be unreasonable, confiscatory and in violation of the Constitution of the United States and the rights and privileges of defendant thereunder, and that said opinion and order imposing said rate be declared to be unconstitutional, null, void and unenforceable.

Second, that plaintiffs take nothing by their suit against defendant; that the injunction sought by plaintiffs be denied, and that as to the purported cause or causes of action alleged in plaintiffs' second amended original petition, defendant go hence without day and recover its costs in this behalf expended.

Third, that the Railroad Commission of Texas, its servants, agents, employees and representatives, and Lon A. Smith, C. V. Terrell and Ernest O. Thompson, the individual members of the Railroad Commission of Texas, and James V. Allred, the Attorney General of the State of Texas, plaintiffs herein and each of them, as well as their successors in office, and their agents, servants, employees and representatives, and all other persons, be permanently restrained and enjoined from any attempt to enforce the said opinion and order of the Railroad Commission of Texas of September 13, 1933, "Exhibit A", attached to plaintiffs' second [fol. 143] amended original petition, or any other order of the said Railroad Commission of Texas, in this or any other proceeding based thereon or giving effect thereto, or to compel defendant, its directors, officers, agents, servants and employees, directly or indirectly, whether by penalties, forfeitures or otherwise in any manner whatsoever, to observe and comply with the said order in any respect, or to observe or comply with any other order of the Railroad Commission of Texas that may be based in whole or in part on, or which gives any effect to said opinion and order, or to compel defendant, its directors, officers, agents, servants and employees, directly or indirectly, to observe, comply with and keep in force and charge, bill and collect from the distributing companies to which it delivers domestic gas, the rate of thirty-two (32¢) cents per one thousand (1,000) cubic feet prescribed by the Railroad Commission of Texas in its said opinion and order, or in any way, directly or indirectly, to interfere with defendant, its directors, officers, agents, servants and employees in charging, billing and collecting for domestic gas delivered by it at the city gates of various towns and cities located in the State of Texas now or at any time in the future, forty (40¢) cents per one thousand (1,000) cubic feet; and that the enforcement of the said opinion and order of the Railroad Commission of Texas be permanently enjoined and restrained.

Fourth, that defendant have such other and further relief, general and special, as may be just and equitable in the premises.

Lone Star Gas Company, by Karl F. Griffith, Thompson & Barwise, Ben H. Powell, Roy C. Coffee, Marshall Newcomb, Its Solicitors.

[fols. 144-145] *Duly sworn to by Karl F. Griffith. Jurat omitted in printing.*

[File endorsement omitted.]

[fols. 146-148] IN DISTRICT COURT OF TRAVIS COUNTY, 53RD
JUDICIAL DISTRICT

[Title omitted]

PLAINTIFFS' SECOND SUPPLEMENTAL PETITION—Filed June 6,
1934

To Honorable C. A. Wheeler, Judge of Said Court:

Come now the plaintiffs in the above styled and numbered cause, appearing herein by and through James V. Allred, the duly elected and acting Attorney General of Texas, and with leave of the court first having been had and obtained, file this their second supplemental petition in lieu of their first supplemental petition heretofore filed in answer to the defendant, Lone Star Gas Company's second amended original answer, and for cause respectfully say:

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[fol. 149]

VI

Further answering herein, if required, plaintiffs deny each and every allegation in defendant's answer contained, and demand strict proof of the same.

VII

Further answering herein, if same be necessary, plaintiffs would show to the court that the Lone Star Gas Corporation, a Delaware Corporation, owns the controlling, voting

[fol. 150] stock of practically all of the distributing companies that are served by said defendant within the State of Texas or to which it transmits gas, said Lone Star Gas Corporation being a holding company, which is the alter ego (meaning the other self and the same) of said defendant, Lone Star Gas Company; that said Lone Star Gas Corporation is likewise the owner and operator of all companies affiliated with it in the adjoining State of Oklahoma, the exact names and numbers of which affiliated companies are unknown to plaintiffs, but well known to the defendant. That said Lone Star Gas Corporation, and/or said Lone Star Gas Company, by stock ownership, own and control all distributing companies that deliver natural gas after it passes the City gates and enters to within the City or town that is served or a user of such gas, and in such distribution and transportation such distributing companies are the instrumentality and agency for the Lone Star Gas Company and Lone Star Gas Corporation, in getting such gas up to the burnertips of the domestic and residential consumers of such gas.

That all of said companies are under one common head and management, the effect of which is to make a single unit and business enterprise in the transmission and delivery of natural gas from the place of production to the point of consumption by the consumer. That said defendant and all such companies are controlled, directed and operated by the same management, head or board of directors; all are represented by the same lawyer or lawyers and are so arranged, connected and systematized as to be and constitute one sole and single entity, which owns, dominates, controls, directs and runs any group, chartered corporation, or affiliated corporation that bears any relation to it, with reference to the sale, transportation or delivery of [fol. 151] natural gas, any where within the State of Texas.

VIII

Plaintiffs would show to the court in this connection that said defendant owns, controls and operates large and extensive gas reserves that are wholly situated within the State of Texas, same being located in Wheeler County in the Panhandle area of Texas, and also in what is commonly referred to as the West Texas Fields in West Texas; and that such gas reserves are more than is required or neces-

sary to serve the needs of the entire State of Texas, or the cities, towns, or distributing companies to which said defendant furnishes natural gas; that such gas reserves are in gas fields commonly known to be and considered the largest in the world, and by reasonable expectation more than are adequate and necessary to furnish the needs of said defendant, Lone Star Gas Company, and the whole of the State of Texas and its citizenship, as long as it engages in gas business within the State of Texas.

Plaintiffs would further show to the court in this connection that there is an inexhaustible supply of gas in and around the fields hereinabove referred to that has not yet been developed, which same is accessible to said defendant at any time, when developed.

In this connection plaintiffs would further show to the court that the gas reserves in Texas owned and controlled by said defendant, Lone Star Gas Company, as compared to the gas reserves owned or controlled by it within the State of Oklahoma, bear a ratio of at least one hundred to one, and that such gas reserves in Oklahoma amount to less than one per cent, as compared to the gas reserves owned [fol. 152] and controlled by it within the State of Texas.

IX

Plaintiffs would further show to the court that any and all gas that is or may be distributed by said defendant from the State of Oklahoma to and within the State of Texas is done so at an excessive and unreasonable cost, and at a much higher cost than natural gas produced within the State of Texas is distributed or furnished to distributing companies or consumers. In this connection they further allege that all of such gas so distributed from the State of Oklahoma, or that originates in said State of Oklahoma and is in anywise distributed within the State of Texas is burdensome and so distributed at a loss of money, and that on account of the economic loss and unnecessary expense that is incurred in such distribution, none of the distributing companies that are served by said defendant, or any of the domestic and residential consumers of such gas, should in equity or fair dealing be charged, burdened with or required to suffer or bear the expense or burden of such gas that is or may be distributed within the State of Texas from the State of Oklahoma; that such economic loss and higher

expense is not brought about or incurred by the distribution of said gas alone, but same is primarily a result of the higher cost and expense that is incurred by the production and purchase of such gas within the State of Oklahoma, where gas is less plentiful and less accessible, and is so required or incurred by gas produced or purchased from the gas reserves and gas fields owned by said defendant, Lone Star Gas Company, within the State of Oklahoma.

[fol. 153]

X

It is further alleged that in the event any gas produced within the State of Oklahoma comes into Texas through the pipelines of said defendant, that such transportation is wholly unnecessary and is only brought about by said defendant for the fraudulent purpose of trying to make that which is intrastate an interstate business, in order to defeat the jurisdiction of this court and the regulatory power provided for by the laws of this State. In this connection they would show that in the Panhandle section of Texas hereinabove referred to, that at a great and unnecessary cost and expense, said defendant has run a part of one of its pipelines from the production points of said gas within the State of Texas through a narrow corner of Oklahoma, and thence into the State of Texas, for the sole and only purpose of trying to establish a blind and make that which is wholly intrastate an interstate business, and thus defeat the jurisdiction of this court, and the regulatory power of the Railroad Commission provided for by law. In this connection plaintiffs would show to the court that that part of said pipeline that cuts across a portion of the southwestern corner of Oklahoma and thence into the State of Texas was erected at an economic loss, and that at the time same was installed and erected, all economics, practical business and sound judgment would have dictated that said pipeline should have been extended southward and southeasterly within the State of Texas instead of having same to traverse a part of the State of Oklahoma at a great economic loss, as was done by said defendant. In this connection, plaintiffs would show to the court that that part of said pipeline which extends through a corner of the State of [fol. 154] Oklahoma was erected through a rough and rocky territory, extending through a sparsely settled territory where there are neither customers to maintain the same

or adequate transportation facilities available either now or at the time the same was installed; that by the location and extension of such pipelines within the State of Texas, efficient transportation was then and is now available; that an earthen soil, inexpensive to excavate, would have been traversed and more populous communities would and could have been served by it, which would have made said line much more profitable to said defendant than the line that it did erect and install within the State of Oklahoma; that from the time of its installation and to the present time, that part of said pipeline within the State of Oklahoma is maintained at a high expense and great economic loss, which would not in any event have been or be entitled, had the same or should the same be maintained within the State of Texas, as herein alleged.

XI

Plaintiffs would further show to the court that said defendant, its affiliates, and all related companies have so created, arranged and constructed and have so attempted to create, arrange and construct its business and property, and method and manner of conducting the same and doing business within this State, so as to set up a subterfuge that defendant's business is ostensibly an interstate business, when, in truth and in fact, such business, all of its component parts, and all transactions done under it, are wholly local and intrastate business.

That all of such action, operations, conduct and transactions on the part of said defendant and all of its affiliates [fol. 155] and related companies are fraudulent, made and done in bad faith, for the sole and only purpose of defeating the jurisdiction of our courts and the regulation by any of the officials of the State.

XII

Plaintiffs would further show to the court that said defendant and its affiliated companies have complete control and charge of all pipe lines, equipment and property, used in the transportation, transmission or sale of natural gas, whether located within Texas or the State of Oklahoma. That if any gas from the State of Oklahoma is used, transported or sold within the State of Texas in any way or manner, whereby it should be held or determined that such use,

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transportation, transmission, sale or transaction constituted interstate commerce and not intrastate commerce, and the doing of a local business as plaintiffs allege it to be, then in such event, plaintiffs would show to the court that all of such gas so transported, sold or delivered within this State, from the State of Oklahoma, is negligible and can and may be separated and divided from all of the gas that is sold, transported or delivered within the State of Texas; and that any gas that comes into this State, which may in any way be or constitute interstate commerce or an interstate business, can and may be separated and divided from all gas that is sold, used, transported, transmitted or delivered within this State, in or as a local business, or in an intrastate manner, and that all business that results from such gas, whether interstate or intrastate, may be ascertained, divided and separated. They show to the court in this connection that the amount of gas business done by [fol. 156] defendant within the State of Oklahoma, as compared to the amount done within the State of Texas, is negligible.

They aver that all business done within this State by said defendant is a local and intrastate business, but that if any of such business should constitute interstate commerce, then in such event, the two can and should be divided, as stated.

XIII

Said defendant is in possession of all of its books, records, documents, and papers, showing how defendant's business is now being conducted, and is able to show from such books, records, documents and papers the exact amount of its business done in the State of Texas as separated and distinguished from its business elsewhere. Such books and records as aforesaid show the exact amount and value of defendant's property located in this State; the exact amount of operating revenue and operating expenses allocatable to Texas operations and business, the extent and amount of gas reserves in this State, and the amounts of gas produced, bought, transported, sold and delivered in the State of Texas. Plaintiffs here now call upon said defendant to bring all of its books, records, papers and documents showing such segregation and separation, or else secondary proof will be offered as to all of the

same, upon the trial of this case, and plaintiffs here now give notice of their intention to offer evidence as to a complete segregation and separation as to all of the same, to show the proper values, expenses and amounts that are fairly allocatable to the State of Texas.

[fol. 157]

XIV

Plaintiffs show the court that all gas transported by the defendant, Lone Star Gas Company, from the State of Oklahoma into the State of Texas, if any, is, after the same comes within the State of Texas, re-processed and treated by being run through gasoline extraction plants for the purpose of removing the volatile gasoline present in such gas; that the removal of such volatile gasoline in the gasoline extraction plants, aforementioned, leaves a residue gas which is then transported by the defendant, Lone Star Gas Company, in its pipe lines for consumption by the distributing companies served by said Lone Star Gas Company and the consuming public. That such residue gas is different in composition and in heating value, and in the British thermo unit content per unit volume of gas, from the gas before removal of volatile gasoline.

Plaintiffs further show that all gas transported by the defendant in its pipe lines from the State of Oklahoma into the State of Texas is, after passing into the State of Texas, re-processed and compressed by being run through compressor stations, which compressor stations by putting the gas under a new and greater pressure thereby change the heating value of such gas and the British thermo unit content per unit volume of gas. Such gas is further re-processed in that, before being delivered to local distributing plants for distribution to domestic consumers, it is run through regulator stations, which regulator stations reduce the pressure of gas in the defendant's pipe lines and allow an expansion of such gas, and by such pressure change create a new heating value and British thermo unit content per unit volume of gas. Plaintiffs further show [fol. 158] that all gas coming into this State from the State of Oklahoma is divided by the pipe lines of the defendant, Lone Star Gas Company, into numerous streams and the same separated into parts and thereafter sold to the various distributing companies supplied with gas from the pipe lines of the defendant.

Plaintiffs would show that the above mentioned methods of treating such gas as comes into the State of Texas from the State of Oklahoma is analogous to the breaking of an original package of merchandise, and that the re-conditioning, processing, treating, and changing the composition of such gas by running it through gasoline plants, and the re-processing and treating by running such gas through compressor stations and regulator stations, as aforesaid, for the purpose of compressing or expanding such gas and breaking up of the original gas into numerous streams and distributing the same to the cities and towns of Texas, and the sale of such gas at various points along the defendant's pipe lines after coming into the State of Texas, constitute a breaking of the original package of gas and make the defendant's business a local business subject to State regulation, even if any of such gas might have originated from an interstate movement in the first instance. They show in this connection that all gas transported by said defendant is carried through its pipe lines in a mixed manner and that no specific or individual amount or load of gas has a specific destination from the point of production, or between the point of origin and the point of consumption, nor can the same be traced after it once enters said defendant's pipe lines.

[fol. 159]

XV

Plaintiffs would further show to the court that said defendant, Lone Star Gas Company, was chartered under the laws of Texas during the year of 1909, and that among other powers and rights, said defendant and all other distributing companies owned and served by it, have the full power and right of eminent domain, and have the right to obtain rights of way, condemn property, and enter into, upon and across the streets, alleys and highways of the State of Texas and municipalities thereof.

That at the time of its incorporation in 1909, said defendant reported and showed a capital stock of \$2,500,000.00. That from the time of its incorporation, it has always earned and made on the fair value of its property within the State of Texas an annual net dividend greatly in excess of ten per cent. That at this time, in 1934, said defendant has properties in Texas, the fair value of which is worth \$30,000,000.00. That after allowing for all reasonable ex-

penses of operation and depreciation, said defendant, under the rate prescribed by the order of the Railroad Commission of Texas, will receive an annual return of not less than ten per cent on the fair value of its property, that is used and useful in the public service.

[fol. 160]. Plaintiffs would further show to the court that said order of the Railroad Commission is in all things reasonable to said defendant, and that defendant's attack on the same is wholly without merit or equity.

Wherefore, premises considered, plaintiffs pray as they have heretofore prayed in their second amended original petition, and for all general and special relief, etc.

James V. Allred, Attorney General of Texas; Elbert Hooper, First Assistant Attorney General; W. C. Fitzhugh, Assistant Attorney General; A. R. Stout, Assistant Attorney General, Attorneys for Plaintiffs.

[fol. 161] *Duly sworn to by Olin Culberson. Jurat omitted in printing.*

[File endorsement omitted.]

[fols. 162-166] IN DISTRICT COURT OF TRAVIS COUNTY, 53RD
JUDICIAL DISTRICT

[Title omitted]

SECOND SUPPLEMENTAL ANSWER OF DEFENDANT, LONE STAR
GAS COMPANY—Filed June 6, 1934

To the Honorable Judge of Said Court:

Comes now Lone Star Gas Company, defendant in the above styled and numbered cause, and, leave of the Court having been had and obtained, files this its Second Supplemental Answer replying to the Second Supplemental Petition of plaintiffs heretofore filed herein, and would respectfully show:

• • • • •

Defendant specially excepts to Paragraph 8 of plaintiffs' Second Supplemental Petition, because—

(a) Same and each and every allegation therein contained are irrelevant and immaterial to any ultimate issue of fact or law involved in this cause and to a determination of the question of whether or not defendant's business of supplying natural gas to various distributing companies at the city gates of various towns and cities in the State of Texas can be controlled and regulated by the Railroad Commission of Texas, for the reason that this Court is and can be only concerned with the nature of the business now being conducted by the Lone Star Gas Company and being conducted by it at the time of the investigation of the Railroad Commission, and the nature of the business which Lone Star Gas Company has been carrying on and conducting in the usual course of events over a period of time. This Court is not and cannot be concerned with the question of the kind and character of business defendant Lone Star Gas Company might in fact have engaged in and conducted, but which, in fact, it does not so engage in or conduct. If [fol. 168] in fact and law the business, or a substantial part thereof, conducted and carried on by Lone Star Gas Company and sought to be regulated by the Railroad Commission of Texas in the order promulgated by it, and sought to be enforced herein, is interstate in character, then the fact that under other circumstances and conditions it might engage in a business which would be subject to the control and regulation of the Railroad Commission of Texas is entirely immaterial to a consideration of the issues of fact and law involved in this case. Said allegations undertake to assume a hypothetical situation which does not in fact exist, or which, if it does exist, does not have any legal significance and the result thereof is simply to attempt to inject into this case matters of fact and law which can have no bearing on the ultimate issues to be determined by the Court and jury herein.

(b) The only purpose of said allegations is to make it appear that Lone Star Gas Company has sufficient gas reserves in the State of Texas to permit it to supply the various distributing companies exclusively with gas moving throughout its entire transit in the State of Texas, and thus

to vision a situation which does not exist, but which, if it did exist, might permit the Railroad Commission of Texas to exercise jurisdiction and control over rates charged by the defendant herein; whereas, the fact that such gas reserves do exist, and that by a rearrangement of its lines, its business, and its routines defendant could conduct a business different from that which in fact it does conduct, is immaterial to any question involved in this case. If said allegations can be made the basis of plaintiffs' right to maintain this suit and can support the power and authority of the Railroad Commission over the gate rates which it seeks to control and regulate, same must necessarily have [fol. 169] the effect of justifying the control and regulation which the Railroad Commission of Texas seeks to exert in the order sought to be enforced herein by completely depriving defendant of its right to engage in interstate commerce and by requiring it to engage in interstate commerce exclusively, and by requiring it to change the kind and character and nature of the business carried on by it, none of which the Railroad Commission of Texas has any power and authority to do, and none of which the Railroad Commission of Texas has undertaken to do.

Wherefore, for the reasons above set out, defendant prays that its said exceptions be sustained, and that each and every allegation contained in the first three paragraphs of Paragraph 8 of plaintiffs' Second Supplemental Petition be stricken.

4

Defendant specially excepts to each and every allegation contained in Paragraph Three of Section 8 of plaintiffs' Second Supplemental Petition, because—

(a) Same are immaterial and irrelevant to any issue of fact and law involved in this case, because, if in fact any part of the business of the Lone Star Gas Company, sought to be regulated by the Railroad Commission and actually regulated and affected by the order entered by it herein and upon which this suit is based, is interstate in character, such business, no matter how small it may be, or what a small part of its entire or general business it may be, is not subject to regulation by the said Railroad Commission of Texas, and is free from such regulation, and any attempted regula-

tion of the same would constitute a violation of the commerce [fols. 170-174] clause of the Constitution of the United States, and the rights of this defendant to engage in interstate commerce thereunder free and clear of interference on the part of any regulatory body of the State of Texas.

(b) Said allegations are further irrelevant and immaterial for the reason that they are inserted solely for the purpose of making it appear that it is not necessary for the defendant to use the gas supply which in fact it owns in Oklahoma, and which in fact it does use for the purpose of supplying certain distributing companies within the State of Texas; whereas, in truth and in fact, the defendant is actually using said Oklahoma reserves and has been using them for a long period of time in the past in the usual and ordinary conduct of the business in which it engages in Oklahoma and Texas; and said allegations only seek to lay a predicate for disregarding existing facts so that the order of the Commission may be upheld on a theory based upon facts which do not exist, but which if they did exist might give the Railroad Commission of Texas jurisdiction and authority to exercise the power which it seeks to exercise in the order promulgated by it.

Wherefore, defendant prays that its foregoing exceptions be sustained and that each and every allegation of Paragraph Three of Section Eight of plaintiffs' Second Supplemental Petition be stricken.

* * * * *

[fol. 175]

7

Defendant specially excepts to Paragraph 10 of plaintiffs' Second Supplemental Petition and to each and every allegation therein contained, because—

(a) Same are wholly irrelevant and immaterial, and seek to avoid the legal effect of the order and opinion of the Railroad Commission and the legal consequences of the kind and character of business actually conducted by this defendant, by stating facts and circumstances which, if they do exist, cannot have the effect of changing the kind and character of business carried on by the defendant, or of giving to the Railroad Commission power and authority which it does not actually have, or of sustaining the validity and

reasonableness of the order of the Commission, if in fact, upon the basis of existing conditions, the same is unreasonable and illegal.

(b) It affirmatively appears from the opinion and order of the Commission and from the plaintiffs' pleadings that [fol. 176] in fact Lone Star Gas Company does transport gas from Oklahoma into the State of Texas and does sell the same to various distributing companies, and its property has been valued on this theory, and its expenses and income computed on this theory, and it affirmatively appears from the opinion and order of the Railroad Commission and from plaintiffs' pleadings that in fact defendant is engaged, in a substantial portion of its business, in interstate commerce. The fact that such business is unnecessary or that it is uneconomical, or that it is being carried on for the purpose of defeating the jurisdiction of this Court and in fraud of the jurisdiction of this Court is legally immaterial, in view of the actual facts and circumstances existing and upon the basis of which the Railroad Commission of Texas proceeded in its investigation and in the entry of the order which plaintiffs seek to enforce herein.

(c) Said allegations, assuming the same to be true, cannot have the legal effect of converting that which is interstate commerce into intrastate commerce, and of conferring upon the Railroad Commission of Texas a jurisdiction, which, in fact and in law, it does not have under existing circumstances.

(d) Each and every allegation contained in said paragraph are argumentative and are not statements of ultimate facts having a material bearing upon plaintiffs' right to the relief sought by them and do not constitute such proper pleadings as are required by law.

Wherefore, defendant prays that each of its said exceptions be sustained and that said paragraph and each and every allegation thereof be stricken from plaintiffs' Second Supplemental Petition.

[fol. 177]

9

Defendant further specially excepts to that portion of Paragraph 10 of plaintiffs' Second Supplemental Petition

wherein it is alleged that the action of defendant in transporting gas from Oklahoma into Texas is brought about for the fraudulent purpose of trying to make that which is intrastate an interstate business and in order to defeat the jurisdiction of the Court, and as a blind, because—

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[fol. 178-180] (d) Defendant further excepts to said allegations, because the purpose of defendant in originating business which is in fact interstate and in carrying on the same and its motive in so doing are entirely irrelevant and immaterial and can have no legal significance in determining the fact of interstate commerce, and, if in fact the defendant is carrying on a business interstate in character, and if in fact the opinion and order of the Railroad Commission of Texas operates to directly interfere with such business, the invalidity of such order cannot be avoided by impugning defendant's motives, nor can what is interstate commerce in fact be changed thereby into intrastate commerce or brought within the regulatory jurisdiction of the Railroad Commission.

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[fol. 181]

12

Defendant specially excepts to Section 12 of plaintiffs' Second Supplemental Petition and each and every allegation thereof, because—

[fol. 182] (a) Said allegations are irrelevant and immaterial to any question of fact or law involved in this cause, and are particularly irrelevant and immaterial in a consideration of the validity of the order of the Railroad Commission as against the attack made upon it by defendant herein, on the ground that it violates the Commerce Clause of the Federal Constitution, because, said allegations have no legal significance and cannot be made the predicate for upholding the order of the Commission, which order has reference to all of the gas transported and sold by the defendant, and which does not undertake to separate or divide the intrastate gas from the interstate gas, and which said order, in its entirety, is sought to be enforced herein by the plaintiffs.

(b) Assuming that the allegations of said paragraph are true and correct, nevertheless, the same are immaterial, because the order of the Railroad Commission does not undertake to separate or divide the gas sold by defendant into that moving intrastate and that moving in interstate commerce, but its said order affects all gas transported and sold by the defendant, and its said order, in its entirety, is sought to be enforced herein; so that, even though the Railroad Commission of Texas might under other circumstances have authority and jurisdiction to regulate the gate rate charged by defendant for the sale and delivery of intrastate gas at the city gates, nevertheless, it has not undertaken to regulate or fix a rate for such gas separate and distinct from the rate fixed for gas moving in interstate commerce, and accordingly, inasmuch as the said order of the Commission is one indivisible order, it must be considered as such, and the fact or possibility of the separation of intrastate and inter-[fol. 183] state gas cannot be made the basis of upholding the order of the Commission in whole or in part.

Wherefore, defendant prays that its exceptions be sustained and that Section 12 of plaintiffs' Second Supplemental Petition be stricken.

• • • • • •

14

Defendant specially excepts to the first paragraph of Section 14 of plaintiffs' Second Supplemental Petition and each and every allegation therein contained, for the following reasons:

(a) Assuming that such allegations are true, nevertheless, same are irrelevant and immaterial on the question of the character of the business in which defendant engages in [fol. 184] in transporting gas through and from Oklahoma into Texas, because it does not appear that after said gas has been reprocessed and treated there is such a difference in its basic characteristics as that it can be said to be a new and different commodity from that which originally started on an interstate movement, and in that it does not appear that the forward movement of said gas is interrupted or that there is such a break in its transit as that it may be

said to have come to rest in the State of Texas and to have become a part of the general mass of property within the State of Texas, and therefore subject to the control of the Railroad Commission of Texas as gas moving in intrastate commerce.

(b) Said allegations attempt to vary the statement of fact contained in the opinion of the Railroad Commission to the effect that the Lone Star Gas Company is engaged in the interstate transportation, sale and delivery of natural gas, and undertake to impeach the fact stated in said opinion, and to contradict the same, and in view of the fact that this suit is one to enforce the order of the Commission, which in turn is based upon its opinion, plaintiffs must accept the facts as stated by the Railroad Commission, upon the basis of which its said order was entered, and are now estopped and cannot now be heard to say that defendant Lone Star Gas Company is not engaged in interstate commerce in Texas and Oklahoma as stated in the said opinion of the Railroad Commission.

(c) Said allegations are irrelevant and immaterial in that, if they are true, they do not change the fact of interstate commerce, nor do they change the basic characteristic of the business of this defendant in transporting gas from and through Oklahoma into the State of Texas, and in the State of Texas up to the gates at the various towns and [fol. 185] cities, in continuous interstate commerce, a business which the Railroad Commission of Texas has no power, authority or jurisdiction to regulate.

(d) Said allegations are irrelevant and immaterial in that they have no legal significance and cannot form the basis of a conclusion of law by this Honorable Court that the business of the defendant in transporting gas through and from Oklahoma into Texas is any different in its nature and character from what it would be if said gas was not reprocessed and treated, as alleged by plaintiffs.

Wherefore, defendant prays that its said exceptions be sustained, and that the allegations of said paragraph be stricken.

Defendant specially excepts to the second paragraph of Section 14 of plaintiffs' Second Supplemental Petition and each and every allegation thereof,

(a) For all of the reasons urged in connection with its exceptions to the first paragraph of Section 14 and made the basis of the same, contained in Paragraph 14.

(b) Said allegations cannot and do not change the fact of interstate commerce, nor do they, nor can they operate to change what is in fact interstate commerce into intrastate commerce, it not appearing anywhere in plaintiffs' pleadings that the forward movement of the gas brought from the State of Oklahoma and through the State of Oklahoma is interrupted until it is delivered at the city gates of the various towns and cities, nor that the pressure at which such gas is transported is materially reduced prior to that time, nor that any of the alleged processing or changes in the physical content of the gas are of such a nature as that the [fol. 186-190] commodity at the time it is delivered to the various distributing companies at the city gates is basically different from, and other than the commodity which originally began its interstate journey prior to the time it was actually brought into the State of Texas from Oklahoma.

Wherefore, for the above reasons, defendant prays that its exceptions be sustained and that said allegations be stricken from plaintiffs' Second Supplemental Petition.

* * * * *

[fol. 191]

20

Defendant specially excepts to that portion of the second paragraph of Section 15 of plaintiffs' Second Supplemental Petition, wherein it is alleged that—

“At this time, in 1934, said defendant has properties in Texas, the fair value of which are reasonably worth \$30,000,000.00,”

for each and every reason made the basis of the exception contained in Subdivision (g) of Paragraph 19 of this its [fols. 192-193] Second Supplemental Answer, and for the further reason that the inquiry in this case is not the reasonable value of defendant's properties located in Texas, but is the reasonable value of defendant's properties located in Texas and Oklahoma, and evaluated in the same manner in which the Railroad Commission of Texas valued the same; that to permit proof to be offered under such allegation by

plaintiffs, would be to change and vary and contradict the order of the Railroad Commission based upon its opinion which shows the manner and way in which it arrived at the conclusions expressed in its said order, and would be to make this case an original suit for the purpose of determining in the first instance the reasonableness of a rate based upon matters of fact not considered by the Railroad Commission, and would therefore be to cause this court in the first instance to act legislatively instead of judicially and prior to any action taken by the Railroad Commission.

Wherefore, for the above reasons, defendant prays that its exceptions be sustained; and that said allegations be stricken from plaintiffs' Second Supplemental Petition.

* * * * *

[fol. 194]

24

Defendant denies generally each and every allegation contained in plaintiffs' said Second Supplemental Petition, and demands strict proof of the same.

25

The said defendant, Lone Star Gas Company, specifically denies each and every allegation in plaintiffs' Second Supplemental Petition contained charging this defendant with fraud or bad faith in the conduct of its business operations.

Wherefore, defendant having answered herein, prays that upon a hearing hereof plaintiffs take nothing by virtue of [fol. 195] their suit against it, and that it have the relief sought by it in its Second Amended Original Answer, and such other and further relief, general and special, in law and in equity, to which it may show itself entitled.

Lone Star Gas Company, by Karl F. Griffith, Thompson & Barwise, Ben H. Powell, Roy C. Coffee, Marshall Newcomb, Its Solicitors.

[fols. 196-199] *Duly sworn to by Karl F. Griffith. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 200] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

ORDER OVERRULING DEFENDANT'S PLEAS TO THE JURISDICTION
AND PLEAS IN ABATEMENT—Filed June 2, 1934

On the 30th day of May, 1934, came on to be heard in due order the Pleas to the Jurisdiction and Pleas in Abatement, and each and every one of the same, filed herein by Defendant Lone Star Gas Company, and being contained in Sections A and B of its Second Amended Original Answer filed herein on the 30th day of May, 1934, in answer to Plaintiffs' Second Amended Original Petition filed herein on May 25, 1934, and being set out on pages 1 to 36 inclusive thereof, and both Plaintiffs and Defendant, through their attorneys of record, having announced ready on the aforesaid Pleas to the Jurisdiction and Pleas in Abatement, the same and each and every one of said Pleas to the Jurisdiction and Pleas in Abatement were presented in due order to the Court, whereupon the Court heard the testimony offered in connection with said Pleas to the Jurisdiction and Pleas in Abatement and the argument of counsel in connection therewith and being advised in the premises is of the opinion that said Pleas to the Jurisdiction and Pleas in Abatement, and each and every one of them should be overruled.

[fols. 201-202] Accordingly, it is ordered, adjudged and decreed by the Court that the Pleas of the Defendant Lone Star Company to the jurisdiction of this Court, contained in Section A of its Second Amended Original Answer filed herein on the 30th day of May, 1934, said Pleas being numbered 1 to 5 inclusive under Section A, and each and every one of said Pleas to the Jurisdiction, be and the same are hereby overruled, to which action of the Court in overruling the same and each and every one of the same Defendant Lone Star Gas Company then and there in open court excepted.

It is further ordered, adjudged and decreed by the Court that the Pleas in Abatement contained in Defendant's Second Amended Original Answer in appearing under Section B thereof, and being numbered 1 to 11 inclusive, and each and every one of the same, be and they are hereby overruled, to which action of the Court in overruling said Pleas in

Abatement and each and every one of said Pleas in Abatement defendant then and there in open court excepted.

Done in open court this 2nd day of June, 1934.

W. F. Robertson, Presiding Judge of the 126th Judicial District of Texas, Sitting for the Presiding Judge of the 53rd Judicial District of Texas.

O. K. A. R. Stout, Assistant Attorney General. William C. Fitzhugh, Assistant Attorney General.

[fol. 203] IN DISTRICT COURT OF TRAVIS COUNTY.

[Title omitted]

ORDER OVERRULING EXCEPTIONS AND DEMURRERS OF DEFENDANT, LONE STAR GAS COMPANY—Filed June 6, 1934

On This the 6th day of June, A. D. 1934, came on to be heard, in due order, the demurrers and exceptions to plaintiffs' Second Amended Original Petition and Second Supplemental Petition, contained in defendant Lone Star Gas Company's Second Amended Original Answer and Second Supplemental Answer, the pleas to the jurisdiction and pleas in abatement of Lone Star Gas Company, contained in its Second Amended Original Answer, having been presented theretofore, in due order, and acted on by the Court; and the Court having considered said exceptions and demurrers and the arguments of counsel in connection therewith, is of the opinion that the following demurrers and exceptions contained in defendant's Second Amended Original Answer should be overruled, to-wit:

1. Defendant's general demurrer contained in Paragraph 1 of Section (c), page 37, and each and every one of the demurrers contained in Section (c) and Numbered 2, 3, 4, 5, 6, 7, 8, 9 and 10 thereof, set out on pages 37 to 43, inclusive.

2. Defendant's special exceptions contained in Section (d) as follows:

[fol. 204] Paragraph 1, Subdivisions (a) to (d) inclusive, pages 44 to 48.

Paragraph 2, pages 48 to 50.

Paragraph 4, Subdivisions (a) and (b), pages 50-53, inclusive.

Paragraph 6, Subdivisions (a) and (b), page 55.

Paragraph 7, page 55.

Paragraph 8, Subdivisions (a), (b) and (c), page 56.

Paragraph 9, Subdivisions (a), (b) and (c), page 57.

Paragraph 10, page 58.

Paragraph 11, Subdivisions (a) to (e), inclusive, pages 58 to 63, inclusive.

Paragraph 12, Subdivisions (a) and (b), page 63.

Paragraph 13, Subdivisions (a), (b) and (c), page 64.

Paragraph 16, Subdivisions (a) to (c), inclusive, page 67.

Paragraph 17, Subdivisions (a) and (d), pages 71 to 72, inclusive.

Paragraph 18, Subdivisions (a) and (b), pages 72-73.

Paragraph 19, Subdivision (a), page 74.

Paragraph 20, Subdivisions (a) and (b), page 77.

Paragraph 21, Subdivisions (a), (b) and (c), page 79.

Paragraph 28, Subdivisions (a) and (b), pages 87-88.

Paragraph 30, Subdivisions (a), (b) and (c), page 89.

The court is further of the opinion that the following demurrers and exceptions contained in defendant's Second Supplemental Answer should be overruled, to-wit:

[fol. 205] 1. The general demurrer contained in Paragraph 1, page 1.

2. The special exceptions contained in the following paragraphs and sections of defendant's Second Supplemental Answer, to-wit:

Paragraph 2, Subdivisions (a) to (3) inclusive, pages 1 to 5, inclusive.

Paragraph 3, Subdivisions (a) and (b) thereof, save as to the second paragraph on page 6 of plaintiffs' Second Supplemental Petition, which said paragraph is stricken from said petition.

Paragraph 4, Subdivisions (a) and (b), pages 8-9.

Paragraphs 7, 8 and 9, pages 14-17, inclusive, and each Subdivision thereof, except as to the following portions of paragraph 10 of plaintiffs' Second Supplemental Petition, pages 8 and 9, which allegations are stricken:

"In this connection plaintiffs would show to the court that that part of said pipe line that cuts across a portion

of the Southwestern corner of Oklahoma and thence into the State of Texas was erected at an economic loss, and that at the time same was installed and erected, all economics, practical business and sound judgment would have dictated that said pipe line should have been extended southward and southeasterly within the State of Texas instead of having same to traverse a part of the State of Oklahoma at a great economic loss, as was done by said defendant."

"* * * which would have made said line much more profitable to said defendant than the line that it did erect and install within the State of Oklahoma; that from the time of its installation and to the present time, that part of said pipe line within the State of Oklahoma is maintained at a high expense and great economic loss, which would not in any event have been or be entailed, had the same or should the same be maintained within the State of Texas, as herein alleged."

Paragraph 10, Subdivisions (a) to (d), inclusive, pages 17-18.

Paragraph 11, Subdivisions (a) to (d), inclusive, pages 18-19.

[fols. 206-214] Paragraph 12, Subdivisions (a) and (b), page, 20.

Paragraph 13, Subdivisions (a) and (b), page 22.

Paragraph 14, Subdivisions (a) to (D), inclusive, pages 22-23.

Paragraph 15, Subdivisions (a) and (b), page 24.

Paragraph 17, page 25.

Paragraph 19, Subdivisions (a), (b), (e) and (g), pages 26 and following.

Paragraph 20, page 30.

Paragraph 23, page 33.

Accordingly, It is Ordered, Adjudged and Decreed that each and every one of the demurrers and exceptions stated in the paragraphs and subdivisions hereinabove set out, both in defendant's Second Amended Original Answer and Second Supplemental Answer be, and the same are hereby overruled, to which action of the court in overruling each and every one of its said demurrers and exceptions, defendant, Lone Star Gas Company, then and there in open court duly excepted.

C. A. Wheeler, Judge, 53rd Judicial District Court of Texas.

[fol. 215] IN 53RD DISTRICT COURT, TRAVIS COUNTY, TEXAS

[Title omitted]

DEFENDANT'S REQUEST FOR PEREMPTORY INSTRUCTION—Filed
June 12, 1934

GENTLEMEN OF THE JURY:

You are instructed herein that you will return a verdict in this case for the defendant, Lone Star Gas Company, and the form of your verdict will be:

“We, the jury, find for the defendant, Lone Star Gas Company, and against the plaintiffs, The State of Texas, et al.

— — —, Foreman.”

Karl F. Griffith, Thompson & Barwise, Ben H. Powell,
Attorneys for Defendant, Lone Star Gas Company.

The above instruction was requested at the conclusion of plaintiffs' testimony and after plaintiffs had rested, and prior to the time defendant, Lone Star Gas Company, offered any testimony and in open court, was considered by the court and plaintiffs' counsel, to whom a copy of the same was furnished, and after due consideration was denied, [fol. 216] to which action the defendant, Lone Star Gas Company, in open court, then and there duly excepted.

C. A. Wheeler, Judge Fifty-third District Court
Travis County, Texas.

[fol. 217] IN 53RD DISTRICT COURT, TRAVIS COUNTY, TEXAS

[Title omitted]

PLAINTIFFS' MOTION FOR AN INSTRUCTED VERDICT—Filed July
5, 1934

To Honorable C. A. Wheeler, Judge of Said Court:

Come now the State of Texas, et al., record plaintiffs in the above entitled and numbered cause, and at the close of the testimony in this case, the State of Texas, et al., having

introduced its testimony in chief and rested, and the defendant, Lone Star Gas Company, having introduced its testimony in chief and having rested, would respectfully move and request the court to instruct the jury to return a verdict herein in favor of the State of Texas, et al., and against the defendant, Lone Star Gas Company, and in this connection would respectfully show to the court that the defendant, Lone Star Gas Company, has failed to overthrow the prima facie validity of the order of the Railroad Commission of Texas, bearing date of September 13, 1933, introduced in evidence herein, and that said defendant, Lone Star Gas Company, has wholly failed to make out by clear and satisfactory evidence any fact — issue that should be submitted to the jury herein.

[fol. 218] Plaintiffs would further show to the court in this connection that said defendant, Lone Star Gas Company, has failed to properly show a segregation as to the amount of property located in Texas and that located in Oklahoma, and has likewise failed to make a proper separation in respect to the amount of business done within the State of Texas, as compared to the amount of business done within the State of Oklahoma; that said defendant, Lone Star Gas Company, has further failed and refused to properly show what part of its business done within the State of Texas constitutes intrastate commerce and what part of its business constitutes interstate commerce; that the burden of proof by law rests upon said defendant to make such segregation and it has wholly failed to discharge such burden.

Plaintiffs would further specially show to the court that said defendant has wholly failed to show that the facts introduced before the Railroad Commission were insufficient to justify the order made by it or that said order as made by the Railroad Commission was in any way unjust or arbitrary, in view of the evidence heard by it. Said defendant has wholly failed to make out a case or discharge any burden of proof in this respect and particular.

Wherefore, the State of Texas et al., record plaintiffs herein, respectfully move and request the court to instruct the jury to return a verdict herein in their favor and against the defendant, Lone Star Gas Company.

Respectfully submitted, James V. Allred, Attorney General of Texas. Wm. C. Fitzhugh, Assistant Attorney General. A. R. Stout, Assistant Attorney General.

[fol. 219] The above and foregoing request for an instructed verdict in favor of the State of Texas, et al., and against the defendant, Lone Star Gas Company, was duly presented to the court and counsel for the defendant, after both plaintiffs and defendant had rested their case in chief in this cause, and the same was considered by the court and overruled, to which Plaintiff duly excepted.

C. A. Wheeler, Judge Presiding.

[fol. 220] IN 53RD DISTRICT COURT, TRAVIS COUNTY, TEXAS

[Title omitted]

DEFENDANT'S MOTION TO STRIKE PLAINTIFFS' EXHIBIT No. 8—
Filed July 10, 1934.

To the Honorable Judge of Said Court:

Comes now defendant, Lone Star Gas Company, and at the conclusion of plaintiff's direct examination of the Witness S. W. Freese, in connection with plaintiff's Exhibit No. 8, and moves the court to strike from the testimony and evidence in this case plaintiff's Exhibit No. 8 and each and every question and answer of the Witness S. W. Freese with reference thereto and based thereon, and further moves the court to instruct the jury not to consider said Exhibit and not to consider any of the questions propounded to the Witness S. W. Freese or his answers thereto with reference to or based upon plaintiff's Exhibit No. 8 for the following reasons, to-wit:

* * * * *

[fol. 221]

II

Because said Exhibit and the testimony given in aid and explanation thereof are wholly speculative in that it presupposes conditions of temperature which did not in fact exist for the 12 months ended December 31, 1933, and for the 12 months ended March 31, 1934.

III

Because the operating expenses as reflected by said exhibit are not the actual operating expenses incurred and

paid by the defendant in connection with its public service business as a whole nor are they the operating expenses actually paid and incurred by the defendant in connection with the conduct of its intrastate business in the State of Texas, and because by eliminating from actual operating expenses the amounts actually paid by the defendant, Lone Star Gas Company, to Lone Star Corporation for the periods in question, the witness has usurped the functions of the managing officers and officials of the Lone Star Gas Company with respect to proper operating expenses and invade the province of the jury in any event if the question of the propriety of such an operating expense is one for determination by anyone other than officers of the company.

IV

Because in the computation of the percentage amounts of 6.74 per cent and 6.76 per cent as available for return on property for the 12 months periods ending March 31, 1934, and December 31, 1933, respectively, the witness S. W. Freese in his testimony and in said exhibit wholly failed to include as a part of the public service of the defendant gas leaseholds and gas reserves both developed and undeveloped, gas well construction, gas well equipment and all other items entering into and constituting the production system property of the defendant located in the State of Texas and used and useful by the company in connection with the conduct of its business in intrastate commerce in the State of Texas; and in lieu has erroneously attempted to substitute an alleged value for the gas produced by the defendant in the State of Texas.

V

Because said exhibit and the testimony of the witness in relation thereto insofar as temperatures are concerned are wholly speculative and theoretical and are not to be considered in connection with a test as to whether the opinion and order of the Railroad Commission, in evidence herein, operates to confiscate the public service property and business of the defendant over all and in intrastate commerce in the State of Texas and denies to defendant due process of law contrary to the 14th Amendment to the Constitution of the United States.

[fol. 223]

VII

Because of the determination of degrees of deficiency as set forth in said exhibit and as testified to by the witness S. W. Freese is wholly theoretical and speculative and highly prejudicial and will cause and tend to cause the jury to believe that the earnings of the defendants for the 12 months ended December 31, 1933, and the 12 months ended March 31, 1934, should have been in excess of the actual net earnings of the defendant for said periods of 12 months each, and will permit the jury to find that the present rate of return which the defendant is able to earn under the charge and rate fixed by the Railroad Commission of Texas is reasonable at the present time based on such speculative testimony, whereas as a matter of fact under the undisputed evidence and based upon the return which the company would have earned under actual conditions, if the rate prescribed by the Commission had been in effect during the periods in question was less than that which as a matter of law would be necessary to avoid the confiscation of the defendant's property.

VIII

Because the operating expenses set forth in plaintiff's Exhibit No. 8 and the property of \$40,256,862.39 and the revenues as therein set forth are not the operating expenses, property and revenues which are attributable solely to the intrastate business of the defendant in the State of Texas.

IX

Because the way and manner in which the witness has arrived at the amounts shown as representing the amount of company's produced gas is not calculated to and will [fol. 224] not result in a determination of the value of such gas or the value of the production system property which is now actually owned by the company and used and useful in connection with its public service and because the amounts determined by the witness as representing the amounts of company produced gas have been arrived at by a consideration of an erroneous legal principle and upon principles which will not result in a determination of the present fair value of items of property making up defendant's production system property which are actually

used and useful in the public service, and because by failing to include in the figure of \$40,256,860.39, shown on page one of plaintiff's exhibit No. 8, an amount to cover production system property, the witness has failed to include an amount to cover the reproduction cost new or the present fair value of all defendant's property used and useful in the public service with the result that the computations of return expressed as a percentage of said figure are overstated to the prejudice of the defendant and in such a way as to mislead and confuse the jury and make it appear that the return computed on the basis as assumed in the exhibit is greater than it actually would be if the witness had included the fair value or reconstruction cost of all of defendant's public service property in the total amount upon which said percentage is computed.

* * * * *

[fol. 225] Karl F. Griffith, Thompson & Barwise,
Ben H. Powell, Marshall Newcomb, by Karl F. Griffith,
Attorneys for Defendant, Lone Star Gas Company.

The foregoing motion was duly and timely submitted to the court and counsel for plaintiffs in open court at the conclusion of the direct testimony of the witness S. W. Freese based upon and in explanation of plaintiff's Exhibit No. 8 and was by the court considered and overruled, to which action of the court in overruling the same defendant then and there in open court excepted.

C. A. Wheeler, Judge Presiding.

[fol. 226] IN 53RD DISTRICT COURT, TRAVIS COUNTY, TEXAS

[Title omitted]

PLAINTIFFS' MOTION FOR AN INSTRUCTED VERDICT—Filed July
16, 1934

To Honorable C. A. Wheeler, Judge of Said Court:

Come now the State of Texas and the Railroad Commission, record plaintiffs in the above styled and numbered cause, at the close of all the testimony in this case and after

both plaintiffs and defendant have finally rested their case and closed their testimony and prior to the reading by the court of the main charge to the jury, and respectfully move and request the court to instruct the jury to render a verdict in their favor and against the defendant, Lone Star Gas Company, for the following reasons:

I

Said defendant has wholly failed to show that the order entered by the Railroad Commission in the light of the testimony introduced before it was unjust and unreasonable or confiscatory.

II

Said defendant has wholly failed to show by clear and satisfactory evidence that said order of the Railroad Commission is unjust and unreasonable, and has not discharged [fol. 227] the burden of proof, either by prima facie evidence, or otherwise to make out a fact case or issue that should be submitted to the jury.

III

Said defendant has failed to make any proper form or kind of segregation between Oklahoma business and Texas business or between interstate (claimed by it) and intrastate commerce.

Wherefore, premises considered, the record plaintiffs here respectively pray and move the court to instruct the jury to return a verdict in their favor and against the defendant, Lone Star Gas Company.

Respectfully submitted, James V. Allred, Attorney General of Texas; William C. Fitzhugh, Assistant Attorney General; A. R. Stout, Assistant Attorney General, Attorneys for Plaintiffs.

[fol. 228] The above and foregoing motion for an instructed verdict by the record plaintiffs herein was duly submitted to the court and counsel for the defendant, after both sides had rested and at the close of all the evidence in this case and prior to the reading of the court's main charge to the jury. Said motion for an instructed verdict was duly considered by the court and the same was overruled, to which Plaintiff duly excepted.

C. A. Wheeler, Judge Presiding.

[fol. 229] IN 53RD DISTRICT COURT, TRAVIS COUNTY, TEXAS

[Title omitted]

DEFENDANT'S REQUEST FOR A PEREMPTORY INSTRUCTION AT
CLOSE OF TESTIMONY—Filed July 14, 1934

Gentlemen of the Jury:

You are instructed herein that you will return a verdict in this case for the defendant, Lone Star Gas Company, and the form of your verdict will be—

“We, the jury, find for the defendant, Lone Star Gas Company, and against the plaintiffs, State of Texas et al.
—— —, Foreman.”

Karl F. Griffith, Thompson & Barwise, Ben H. Powell,
Marshall Newcomb, by Karl F. Griffith, Attorneys
for Defendant, Lone Star Gas Company.

The above requested instruction was duly and timely requested at the conclusion of the evidence and before the preparation of the court's charge, in open court, was considered by the court and plaintiffs' counsel, and after due consideration was denied; to which action the defendant in [fol. 230-234] open court excepted and objected.

It is here stated that all other issues and instructions requested by defendant, were requested only after the court had refused its requested peremptory instruction and subject to its exception to such action of the court and without waiving its said motion and its exception to the action of the court in overruling same.

C. A. Wheeler, Judge Presiding.

[fol. 235] IN 53RD DISTRICT COURT, TRAVIS COUNTY, TEXAS

[Title omitted]

PLAINTIFFS' OBJECTIONS AND EXCEPTIONS TO PARAGRAPH
THREE OF COURT'S CHARGE DEFINING “USED AND USE-
FUL”—Filed July 16, 1934

To Honorable C. A. Wheeler, Judge of Said Court:

Come now the State of Texas, et al., prior to the reading of the court's main charge to the jury and respectfully ob-

ject and except to paragraph three of the court's main charge, wherein the term "used and useful" is defined by the court, for the following reasons:

I

Because said definition does not adequately apply the law to the facts of this case and because same is on the weight of the evidence and will tend to and will confuse the jury, especially with reference to the Petrolia Gas Field, and which under the evidence costs more money to maintain the same than could in any way be realized therefrom, and which, under the plaintiffs' contention, should be entirely eliminated from the defendant's rate base.

[fol. 236]

II

Under the definition as laid down by the court, said defendant could have any amount of property, no matter what the kind or character or cost thereof might be, and under the definition as submitted by the court, the jury would be bound to give effect to and include the same.

III

Plaintiffs respectfully suggest and represent to the court in this connection that the word "actually" in said paragraph three should be stricken and that the word "reasonably" should be included in lieu thereof and that the word "reasonably" should be included in the second portion of said definition between the words "been" and "acquired", thus making said definition to read as follows:

"3. By the term 'used and useful's is meant the property of the defendant reasonably being used by the defendant in the production, transportation, sale, and delivery of natural gas to its customers; and also such property as has been reasonably acquired by the defendant in good faith and now held for use in the reasonably near future in order to enable it to supply and furnish adequate and uninterrupted gas service."

IV

As said term "used and useful" has been defined, a greater burden of proof is put upon the plaintiffs than is required by law, and, moreover, said definition is an incorrect state-

ment of law, will likely tend to confuse and mislead the jury, and furthermore, same binds and instructs them to include [fol. 237] any property the defendant might have, regardless of whether the same is being reasonably used or efficiently used or even properly used, and regardless of expense thereof.

Respectfully submitted, James V. Allred, Attorney General of Texas. William C. Fitzhugh, Assistant Attorney General. A. R. Stout, Assistant Attorney General.

The above and foregoing objections and exceptions were duly presented to the court and adverse counsel prior to the reading of the main charge to the jury.

Same were duly considered, duly overruled, and ordered filed as a part of the record.

C. A. Wheeler, Judge Presiding.

[fol. 238] IN 53RD DISTRICT COURT, TRAVIS COUNTY, TEXAS

[Title omitted]

DEFENDANT'S EXCEPTIONS AND OBJECTIONS TO THE COURT'S
MAIN CHARGE—Filed July 16, 1934

Be it remembered that upon the trial of the above styled and numbered cause, at the conclusion of all of the evidence herein, and after the court had overruled defendant's motion for a peremptory instruction, and without waiving the same, or its exceptions thereto, and after the court had prepared his main charge to the jury in writing, and after he had presented it to defendant's attorney of record for exceptions and objections thereto, the defendant by and through its attorneys of record did then and there in open court make and take the following objections and exceptions in writing to the court's main charge and the various parts thereof, all of which were taken and made within a reasonable time after a preparation of the court's main charge and the submission thereof to the defendant's counsel of record and within a reasonable time prior to the reading of the court's main charge to the jury and in the way and manner provided by law.

I

Defendant excepts and objects to the court's charge as a whole and to each and every portion and paragraph thereof because the same is a general charge and because the same denies to the defendant the opportunity of a full, fair and [fol. 239] complete judicial review upon specific findings as to each disputed fact issue in evidence before the jury, and because the submission of such charge denies to this defendant a full, fair and complete hearing and determination of the separate and essential elements entering into the determination of the reasonableness and legality of the Commission's order and entering into the effect of the enforcement of such order upon this defendant's rights under the Federal Constitution.

II

Because such charge denies to this defendant the right to a determination of the question of whether or not the order of the Commission and the rate prescribed therein are unjust and unreasonable upon the independent judgment of the jury as to the facts and upon the independent judgment of the court as to the law and denies to this defendant an opportunity to secure upon review by the appellate courts a determination of the questions of fair value, net operating revenues, rate of return and rate of depreciation reserve accrual entering into the determination of the reasonableness of said order and operates to deprive this defendant of the right to have the appellate courts pass upon the question of the correctness of the findings of fact which must necessarily be made by the jury in order to answer the special issue submitted by the court and to determine whether in each particular instance such findings were supported by competent evidence in the record and were reached by the application of proper legal principles.

III

Because such charge denies to this defendant a determination by the jury based on its independent judgment of each ultimate issue of fact as to which the evidence is disputed with respect to present fair value, net operating revenues, rate of return, and rate of depreciation reserve accrual upon the Federal question raised by the defendant's answer in this case, namely, whether or not

the effect of the enforcement of the Commission's said order and the rates prescribed therein take defendant's property and the use thereof without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States, and denies to this defendant the equal protection of the laws, contrary to the Fourteenth Amendment to the Constitution of the United States, and denies to this defendant the right on this trial to reserve for review the determination of such ultimate fact issues separately, and prevents the defendant from reserving for review by the appellate courts the legality of the separate determinations of such ultimate fact issues as fair value, net operating revenues, rate of return, and rate of depreciation reserve accrual, and prevents this defendant from reserving for review the erroneous application of correct principles of rate making law to the facts found, and prevents this defendant from knowing and reserving for review by the appellate courts whether there have entered into the answer to the single question propounded by the court to the jury, findings made without evidence to support them, findings made contrary to the evidence in the case, findings made upon mixed questions of law and fact, and findings made upon the attempted application by the jury of inadmissible evidence admitted in evidence in the record over the objections of this defendant.

IV

Because such charge is based upon the erroneous assumption that this action is an appeal under the Texas statutes and particularly Article 6059 of the Revised Civil Statutes of Texas of 1925, and ignores and excludes from the jury [fols. 241-259] the determination of the Federal questions pleaded and urged by defendant in this case, namely, denial of due process by confiscation of defendant's property from the effect of the Commission's said order and the rate fixed therein, and denial of the equal protection of the laws by the enforcement of the Commission's said order and the rate fixed therein.

V

Defendant further excepts and objects to said charge as a whole for the reason that same wholly fails to give to the jury the necessary and proper instructions as to what they shall consider in determining whether the order of the Rail-

road Commission of Texas is reasonable or unreasonable and wholly fails to give to the jury the proper measure or means for determining said issue.

[fols. 260-261]

XV

Defendant excepts and objects to special issue No. 1, contained in the court's main charge to the jury, for the following reasons, to-wit:

[fols. 262-263] (f) Because said special issue No. 1 submits only the question of whether or not the Commission's said order is unjust or unreasonable as defined by the Texas statutes and as such term is used in the Texas statutes and particularly those statutes commonly known and designated as the Gas Utilities Act, being article 6050 to 6066 of the Revised Civil Statutes of Texas of 1925, and permits the jury to answer said special issue against the defendant solely upon a finding that the order of the Railroad Commission is not unjust and unreasonable under the Texas statutes, and prevents the defendant securing answers of the jury to appropriate issues submitting to it the ultimate facts upon the basis of which answers the court may determine whether the effect of the said order is to deny to defendant a reasonable annual net rate of return upon the present fair value of its property; and the submission of said issue in the way in which it is submitted without further or additional issues being submitted covering the question of confiscation, prevents this defendant from securing a determination based upon appropriate fact findings of whether or not the effect of such order is to take this defendant's property and the use thereof without just compensation and without due process of law and to deny to this defendant the equal protection of the law.

[fol. 264] (k) Because in determining the answer to said special issue the jury is permitted to consider all of the testimony introduced in evidence upon the trial of this case including all of the legally insufficient and incompetent evidence offered by the plaintiffs relating to the book cost and

value of defendant's property physically located in the State of Texas without reference to its use, for intrastate or interstate commerce and the revenues and earnings from the sale of gas in Texas without reference to the source of such gas and without reference to whether the sale of same was a transaction in intrastate or interstate commerce, and in order that the jury may not predicate its answer on such incompetent testimony it should be instructed not to consider the same for any purpose or give any effect thereto in making its answer to said special issue and defendant now requests that the jury be so instructed.

[fol. 265] (n) Same permits the jury to find that the order of the Railroad Commission and the rate therein prescribed are just and reasonable and not confiscatory on the theory that line A, which is defendant's high-pressure natural gas pipe line extending from Wheeler County, Texas, into Oklahoma and back into the State of Texas is used exclusively in interstate commerce and sales from line A in Texas are intrastate sales, whereas, under the undisputed evidence, it appears that line A is used and useful in the conduct of defendant's interstate business and that gas sold in Texas off of line A is gas which moves throughout its entire transit up to delivery at the various cities' gates, in interstate commerce.

(o) Same permits the jury to find that the order of the Railroad Commission and the rate prescribed therein are reasonable by considering the value of property of the defendant located physically in Texas without reference to the use of such property even though located in Texas and without reference to the value of the use of such property and without reference to the fact that although such property is located in Texas some of it is nevertheless used and [fols. 266-267] useful in connection with defendant's interstate business; and the result is to permit the jury to answer said special issue on the erroneous legal principle that the order of the Railroad Commission can be upheld on the theory that defendant is earning a reasonable rate of return considering the value of property physically located in Texas and revenues from the sale of gas in Texas without reference to the source of such gas.

(q) The same permits the jury to find that the order of the Railroad Commission is reasonable on the basis of testimony of the allocation and segregation of property and sales according to the geographical location of the property and the places of the making of the sales regardless of the use to which such property is put and regardless of the source of the gas which is actually transported through such property and sold, which allocation in its nature is entirely arbitrary and made without reference to the use of the property or the value of such use and is incompetent, of no probative force and effect, of no legal significance and erroneous in law.

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[fol. 268]

XVI-a

Defendant further excepts and objects to the submission of special issue No. 1 to the jury and in the way and manner in which the same is submitted to the jury and particularly to that portion of the same wherein the court instructs the jury to find an answer to said issue from the evidence in this case because included in the evidence in this case is the testimony of plaintiffs' witnesses Phillips and Freese relating to the value of defendant's property physically located in the State of Texas and the amount available for return from the sales of gas in Texas without reference to [fol. 269] the use of such property or without reference to the source of the gas sold, all of such testimony being legally incompetent and insufficient as evidence under any proper issue made by the pleadings in this case and the result will be that the jury will be permitted to consider such incompetent testimony and defendant will be deprived of an opportunity on appeal to preserve this error through a consideration of the facts determined by the jury as a prerequisite to its answer to said issue.

XVI-b

Defendant further excepts and objects to said special issue No. 1 in the way and manner in which the same is submitted because:

(a) Same permits the jury to take into consideration in determining whether or not the order of the Commission is reasonable or unreasonable the amount of revenues which

the witness Freese calculated would have been available to the defendant and received by it from the sales of gas during the accounting periods in question had weather conditions been what he determined to be normal, and thereby the jury will be permitted to predicate its answer upon conditions which in fact did not exist and upon the basis of speculation as to the effect of such order if conditions different from those which actually existed, had existed, and thereby the jury will be permitted to answer said special issue against the defendant on the basis of conditions other than actual conditions with the result that although defendant's property is now being confiscated, it must suffer such confiscation because of such speculative testimony, and in this connection defendant here and now requests the court to instruct the jury that in answering said special issue they shall give no effect to additions to earnings made [fol. 270] by the witness Freese in plaintiffs' exhibit 8 and that they are to base their answer upon actual conditions resulting from actual operations of the defendant.

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(c) Because said language in said special issue "as applied to points in Texas" is misleading and confusing because it does not differentiate between the different theories upon which the evidence in this case was predicated.

(d) Because an answer to said special issue can not be made the basis of a judgment against defendant enjoining it from collecting more than 32 cents for gas supplied at any point within the State of Texas for the reason that said issue does not differentiate between interstate and intrastate commerce and does not submit to the jury the question of whether or not the rate for gas sold in intrastate commerce is reasonable, and therefore even if the jury answers said issue against the defendant any judgment based on said answer enjoining defendant from charging more than 32 cents for gas which under the undisputed evidence is sold as a part of a transaction in interstate commerce would constitute a direct interference with defendant's interstate business and would violate the commerce clause of the Federal Constitution and consequently such [fol. 271] issue is irrelevant and immaterial and does not submit to the jury an ultimate fact issue determinative of this case.

XVII

Defendant further excepts and objects to the court's main charge and to the court's failure therein to submit appropriate special issues from which can be determined the question of whether or not the rate prescribed in the order of the Railroad Commission was unreasonable and confiscatory for the year 1933 considering defendant's property located both in Texas and in Oklahoma, and was unreasonable and confiscatory for the year 1933 and at the present time considering defendant's property used and useful in the production, transportation, sale and delivery of natural gas originating in and moving through-out its entire transit wholly within the State of Texas, and defendant here and now requests the court to submit appropriate special issues covering said matters of fact.

XVIII

Defendant here and now requests the court to submit to the jury in correct and proper form special issues covering each and everyone of the questions of fact set out and indicated in defendant's requested special issues Nos. 1 to 118, inclusive, together with appropriate definitions of legal terms employed in each and everyone of the same together with appropriate charges upon the burden of proof in connection with each of said special issues and here and now excepts and objects separately to the failure and/or refusal of the court to submit in one or more appropriate special issues each question of fact indicated in each of defendant's special requested issues together with appropriate definitions [fol. 272] and appropriate charges upon the burden of proof, if the form of the question or any definition accompanying the question or any charge upon the burden of proof accompanying any such question is incorrectly set out or stated in any or all of defendant's said requested issues.

[fol. 273] Karl F. Griffith, Thompson & Barwise, Ben H. Powell, Marshall Newcomb, Attorneys for Defendant, Lone Star Gas Company.

[fols. 274-514] The above and foregoing exceptions and objections and requests were made and taken and submitted

in writing under the signature of counsel for defendant within a reasonable time after a copy of the court's main charge had been presented to counsel for the defendant and before said charge was read to the jury and in due and seasonable time and having been presented to and considered by the court in open court before the court's main charge was read to the jury, each and all of such exceptions and objections and requests were by the court overruled and refused, to which action of the court in overruling and refusing the same, and each and everyone of the same contained therein, defendant, Lone Star Gas Company, then and there in open court duly excepted and said exceptions and objections are ordered filed as part of the record in this case.

C. A. Wheeler, Judge Fifty-third Judicial District Court.

[fol. 515] IN 53RD DISTRICT COURT, TRAVIS COUNTY, TEXAS

[Title omitted]

CHARGE OF THE COURT—Filed July 17, 1934

GENTLEMEN OF THE JURY:

This cause will be submitted to you on a special issue in the form of a question, which you will answer from the evidence introduced before you as hereinafter instructed, and your answer to this special issue will constitute your verdict in this case. You will write your answer to the special issue upon the separate paper handed you herewith, numbered in proper form for your answer. You will select one of your number as foreman, who will preside over your deliberations and who will sign your verdict for you when you have agreed upon it.

You are the exclusive judges of the facts proved, of the credibility of the witnesses, and of the weight to be given to the testimony, and you will decide the issue submitted according to the evidence; but you must receive the law from the Court, as given in this Charge, and be governed thereby.

As to the rules of law applicable to the issue to be determined by you, and to assist you in answering said special issue, you are instructed as follows:

1. By "fair return" is meant that the Lone Star Gas Company is entitled to earn a rate on the present fair value of its property used and useful in the service of the public equal [fol. 516] to that generally being made at the same time within the same general part of the country upon investments in other business undertakings which are attended by like risks and uncertainties. The rate of return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate under efficient and economical management to maintain and support its credit and enable it to raise money necessary for the proper discharge of its duties.

2. By "fair value" is meant the reasonable worth of the property at this time that is being used and useful in the public service.

3. By the term "used and useful" is meant the property of the defendant actually being used by the defendant in the production, transportation, sale, and delivery of natural gas to its customers; and also such property as has been acquired by the defendant in good faith and now held for use in the reasonably near future in order to enable it to supply and furnish adequate and uninterrupted gas service.

4. By "operating expenses" is meant such expenses as are reasonably incurred by the Lone Star Gas Company in the operation of its property in furnishing gas to the various distributing companies.

5. By "annual depreciation" is meant the amount per annum that is reasonably necessary to compensate for the wearing out and any necessary replacements and retirements of property of the Lone Star Gas Company.

6. By the term "reproduction cost new" is meant the cost of constructing, new, as of the date in question, defendant's property used and useful in the public service.

7. By the term "going value" is meant the difference [fol. 517] between the value of defendant's property used and useful in the public service as an operating, functioning property, with a seasoned, organized, co-ordinating plant and personnel, with customers secured and business attached, in active and successful operation, rendering service

and capable of earning a fair rate of return, and the value of a like property of mere physical units built and operable, but not actually operating, and not actually having customers secured and business attached.

8. There have been introduced in evidence before you in this case certain findings and conclusions of the Railroad Commission of Texas from its hearing of the matter now on trial; and you are instructed that as to such findings and conclusions, you may consider same for the purpose for which same were admitted in evidence on this trial,—that is, for the purpose of assisting you (if same does assist you) in determining whether the order of the Railroad Commission of date September 13, 1933, is unreasonable and unjust to defendant, and for no other purpose.

9. You are instructed that the burden of proof is upon the defendant, Lone Star Gas Company, to show by clear and satisfactory evidence that the rate promulgated by the Railroad Commission in its said order of September 13, 1933, is unreasonable and unjust as to it.

10. By “unreasonable and unjust” is meant that the rate prescribed and adopted in the said order of the Railroad Commission was so low as to have not provided for a fair return upon the fair value of defendant’s property used and useful in supplying the service furnished by said defendant.

[fol. 518] Now, bearing in mind the foregoing definitions and instructions, you will answer the following special issue:

Special Issue No. I. Do you find from the evidence in this case that, as applied to points in Texas, the order of the Railroad Commission of Texas, bearing date of September 13, 1933, providing for a rate of not exceeding 32 cents per thousand cubic feet of gas sold to the distributing companies at the gates of points served, is unreasonable and unjust as to the defendant, Lone Star Gas Company? Answer this question “yes” or “no”.

(In determining your answer to said issue, you are instructed that the defendant, Lone Star Gas Company, is entitled to receive a fair return at this time on the present fair value of its property that is used and useful in the public service, after first deducting all necessary operating ex-

penses and a fair and reasonable amount for depreciation of said property; and that, in determining what is a fair value of said property, you will take into consideration the reasonable worth of the property at this time that is being used and useful in the public service, including the reproduction cost new of said property, annual depreciation, and the amount of going value, if any, that inheres in said property.)

C. A. Wheeler, Judge 53rd Judicial District of Texas.

[fols. 519-522] IN 53RD DISTRICT COURT, TRAVIS COUNTY,
TEXAS

[Title omitted]

VERDICT OF THE JURY—Filed July 21, 1934

We, the jury, answer the Special Issue submitted to us in this cause as follows:

Answer to Special Issue No. I. Yes.
P. R. Bible, Foreman.

[fol. 523] IN 53RD DISTRICT COURT, TRAVIS COUNTY, TEXAS

[Title omitted]

PLAINTIFFS' MOTION FOR JUDGMENT, NON OBSTANTE VEREDICTO—Filed July 26, 1934

To the Honorable C. A. Wheeler, Judge of Said Court:

Come now the record plaintiffs in the above styled and numbered cause, and respectfully move and request the Court to enter judgment in their behalf, and against the defendant, Lone Star Gas Company, notwithstanding the verdict of the jury, for the following reasons:

I

Because, as a matter of law, there was no issue to be submitted to the jury in the first instance, and the Court should have granted the record plaintiffs' request for an instructed verdict in their behalf and against the defendant, Lone Star Gas Company.

II

Because, as a matter of law, the defendant has wholly failed to discharge the burden of proof incumbent upon it, and to prove by clear and satisfactory evidence that the [fol. 524] order of the Railroad Commission of Texas was or is unreasonable and unjust as to it.

III

Because for the further reason, as a matter of law, if a proper deduction is made for certain items that were merely set up on the defendant's books concerning which no clear or satisfactory evidence was ever shown, and after giving said defendant the full benefit of the fair value of its property within the State of Texas, or that could in any way be reasonably allocated to the State of Texas, the testimony clearly shows that the defendant was earning a fair net rate of return annually, is doing so at this time, and further that the testimony clearly not only shows that said order of the Railroad Commission is and was not unjust and unreasonable to said defendant, but that the same is both generous and just to it.

IV

Because, further, none of the testimony introduced before the Railroad Commission of Texas was introduced in this trial by said defendant, and for that reason it cannot be said as a matter of law that the order of September 13, 1933, is unreasonable and unjust to said defendant, Lone Star Gas Company. On the contrary, all of said record and the evidence adduced during the hearing held by the Railroad Commission was offered in evidence during the trial of this case, and the same was excluded by the Court, over the plaintiffs' exception, on account of the objection made by said defendant.

[fol. 525] The testimony of the hearing before the Railroad Commission that was so offered clearly shows that said order is not unreasonable or unjust, and as a matter of law, plaintiffs are entitled to a judgment, because their motion for an instructed verdict should have been granted, and this cause should have never been submitted to the jury in the first instance.

This motion is made without prejudice to plaintiffs' rights, motions and grounds for a new trial, in the event that the same is not granted.

Premises Considered, plaintiffs pray the Court that judgment be entered in their behalf Non Obstante Veredicto and against the defendant, Lone Star Gas Company; and they further pray for all proper orders of the Court in the premises, and for general relief.

Respectfully submitted, James V. Allred, Attorney General of Texas; William C. Fitzhugh, Assistant Attorney General; A. R. Stout, Assistant Attorney General, Attorneys for Plaintiffs.

[fols. 526-528] IN 53RD DISTRICT COURT, TRAVIS COUNTY,
TEXAS

No. 53,033

THE STATE OF TEXAS et al.

vs.

LONE STAR GAS COMPANY

JUDGMENT—Filed July 26, 1934

On the 11th day of June, A. D. 1934, came on to be heard the above styled and numbered cause, wherein the State of Texas, the Railroad Commission of Texas, Lon A. Smith, C. V. Terrell and Ernest O. Thompson, in their official capacities as members of and composing the Railroad Commission of Texas, and James V. Allred, in his official capacity as Attorney General of the State of Texas, are plaintiffs, and Lone Star Gas Company, a corporation, is defendant, and came the said parties herein and announced ready for trial, and came a jury of good and lawful men, towit, I. R. Bible and eleven others, who being duly impaneled and sworn, and having heard the pleadings, the evidence and argument of counsel from day to day, did on the 18th day of July A. D. 1934, retire to consider their verdict in response to the following charge submitted to them by the court:

[fol. 529] It is Therefore Ordered, Adjudged and Decreed by the Court that the order of the Railroad Commission of Texas, bearing date September 13, 1933, providing for a rate of not exceeding thirty-two (32¢) cents per one thousand cubic feet of gas, sold by Lone Star Gas Company to various distributing companies at the city gates of various towns and cities served by it, is unreasonable and unjust [fol. 530] to the defendant, Lone Star Gas Company, and is invalid and unenforceable.

It is Further Ordered, Adjudged and Decreed that the relief sought by plaintiffs in their suit against Lone Star Gas Company be, and the same is hereby denied, and that plaintiffs, the State of Texas, the Railroad Commission of Texas, Lon A. Smith, C. V. Terrell and Ernest O. Thompson, in their official capacities as members of and composing the Railroad Commission of Texas, and James V. Allred, in his official capacity as Attorney General of the State of Texas, take nothing by their suit against defendant, Lone Star Gas Company, and that defendant go hence without day.

It is Further Ordered, Adjudged and Decreed that the State of Texas, the Railroad Commission of Texas, Lon A. Smith, C. V. Terrell and Ernest O. Thompson, in their official capacities as members of and composing the Railroad Commission of Texas, and James V. Allred, in his official capacity as Attorney General of the State of Texas, plaintiffs herein, and each of them, and the successor or successors in office of each of them, as well as their servants, agents, employees and representatives, be and they are hereby permanently restrained and enjoined from enforcing or attempting to enforce, in any manner whatsoever, the said order of the Railroad Commission of Texas, of date September 13, 1933, or from enforcing or attempting to enforce any other order of the said Railroad Commission of Texas, based on said order of September 13, 1933, or giving effect thereto, and from compelling or attempting to compel defendant, Lone Star Gas Company, directly or indirectly, in any manner whatsoever to observe and comply with the said order of the Railroad Commission of Texas of September 13, 1933, or to observe or comply with any other order of the Railroad Commission of Texas, that may [fol. 531-32] be based in whole or in part on, or which gives any effect to, said order of the Railroad Commission of September 13, 1933, and from compelling or attempting

to compel defendant, Lone Star Gas Company, to charge, bill and collect from the distributing companies to which it delivers domestic gas, the rate of thirty-two (32¢) cents per thousand cubic feet of gas prescribed by the Railroad Commission of Texas in its said order, and from interfering with defendant, Lone Star Gas Company, in any manner whatsoever, in the charging, billing and collecting for domestic gas delivered by it at the city gate of various towns and cities served by it and located in the State of Texas, of forty cents per thousand cubic feet now, or at any time in the future, until and unless the said rate shall have been changed or modified by lawful order of duly constituted public authority.

It is Further Ordered, Adjudged and Decreed by the Court that defendant, Lone Star Gas Company, recover of and from plaintiffs herein, and each of them, all costs in this behalf expended, for which let execution issue.

To all of which action of the court in rendering judgment as aforesaid, plaintiffs, the State of Texas, et al., in open court duly excepted.

C. A. Wheeler, Judge, Fifty-third Judicial District Court, Travis County, Texas.

Final judgment dated July 26, 1934.

[fols. 533-534] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

ORDER OVERRULING PLAINTIFFS' MOTION FOR JUDGMENT NON OBSTANTE VEREDICTO—Filed July 26, 1934

On this, the 26th day of July, A. D. 1934, came on to be heard and considered the plaintiffs' motion for judgment in its favor, and against the defendant, Lone Star Gas Company, non obstante veredicto of the jury;

And said motion having been duly considered by the Court, the Court is of the opinion and so finds that the same should not be sustained:

And it is hereby in all things overruled:

To which action and judgment of the Court in overruling said motion the plaintiffs then and there in open court duly excepted.

C. A. Wheeler, Judge of the 53rd Judicial District Court of Travis County, Texas.

[fol. 535] IN 53RD DISTRICT COURT, TRAVIS COUNTY, TEXAS

[Title omitted]

PLAINTIFFS' FIRST AMENDED MOTION FOR NEW TRIAL—Filed
July 26, 1934

To the Honorable C. A. Wheeler, Judge of Said Court:

Come now the State of Texas and the Railroad Commission of Texas, composed of its duly elected and acting members, Lon A. Smith, Chairman, C. V. Terrell and Ernest O. Thompson, appearing herein by and through James V. Allred, the duly elected and acting Attorney General of Texas, and with leave of the Court first having been had and obtained, file this, their first amended original motion for a new trial, their original motion having been first duly filed on July 21st, 1934, and without waiving their motion for judgment non obstante veredicto, and respectfully move the Court to set aside the verdict of the jury and the judgment of the Court rendered herein, and also to grant them a new trial herein for the following reasons, to-wit:

1

The Court erred in defining the term "used and useful" in Paragraph 3 of the Court's main charge. Such error was duly and seasonably objected and excepted to by plaintiffs [fols. 536-537] and was pointed out to both the Court and adverse counsel prior to the Court's reading of his main charge to the jury. Plaintiffs' objections and exceptions and the Court's error in defining said term are again pointed out. Such definition was very prejudicial to plaintiffs, an incorrect statement of the law, on the weight of the evidence, all of which entitles plaintiffs to a new trial.

2

Because the verdict of the jury was contrary to all of the evidence in the case.

3

Because the verdict of the jury was so against the great weight of the competent and relevant evidence that the same should be set aside.

4

The defendant, Lone Star Gas Company, failed to show and to prove by clear and satisfactory evidence that the order of the Railroad Commission of Texas was unreasonable and unjust as to it.

5

The verdict of the jury should be set aside and a new trial granted, because the defendant failed and refused to discharge the burden of proof that rests heavily upon it by law.

6

Because the verdict of the jury is and was contrary to the law of the case.

.

[fol. 538]

11

The Court erred in allowing the defendant to introduce in evidence the defendant's styled Exhibit No. 28, and particularly Volumes 7 and 8 thereof, which was prepared by [fol. 539] the witness Connor, such evidence and exhibit being admitted over plaintiffs' objection and exception.

12

The Court erred in permitting the witness Connor to read and testify from the defendant's styled exhibit, being Volumes 7 and 8 of Exhibit No. 28, which same was admitted over the plaintiffs' objection and exception.

13

The Court erred in refusing to permit the record plaintiffs to introduce the record and statement of facts in the hearing of this case before the Railroad Commission.

14

The Court erred in sustaining the defendant's objection to the offer by plaintiffs to introduce the record and statement of facts adduced in the hearing of this cause before the Railroad Commission of Texas, to which action of the Court plaintiffs duly excepted.

15

The Court erred in not requiring the defendant to make a proper segregation of the value of its property in Texas, and the value of its property in Oklahoma, as same applied to the amount of business done in each of said states.

16

The Court erred in not requiring the defendant to make a proper segregation of the value of its property, as same applied to interstate and intrastate commerce.

[fols. 540-542]

17

The verdict of the jury should be set aside and a new trial granted herein, because said defendant wholly failed to segregate its Oklahoma and Texas property and the business done by it, insofar as same applied to interstate and intrastate commerce.

18

The verdict of the jury should be set aside and a new trial granted herein, because the defendant failed to discharge the burden of proof resting upon it to make a proper segregation of its interstate and intrastate business and property.

19

The Court erred in not granting the plaintiffs' motion and request for an instructed verdict after the defendant had first rested its main case in chief, at the close of its direct testimony.

20

The Court erred in not granting the plaintiffs' motion and request for an instructed verdict, duly and timely made, at the close of all of the evidence in the case, after both sides had finally rested, and prior to the Court's reading of the main charge to the jury.

21

The Court erred in permitting the defendant to offer in evidence, over the objection and exception of plaintiffs, solely the order and opinion of the Railroad Commission, for the sole purpose of attacking the same.

• • • • •

[fol. 543]

33

The Court erred in sustaining the objection made by defendant to the plaintiffs' proffer of evidence from the witness D. A. Hulcy on cross-examination that the temperature conditions caused a loss of business in the years 1933 and 1934.

35

The Court erred in allowing the defendant to introduce in evidence defendant's Exhibit No. 28, because same did not show any segregation between the value of the property in Texas and that in Oklahoma.

[fol. 544]

36

The Court erred in admitting in evidence defendant's styled Exhibit No. 31 with reference to gas leases and reserves, because the same did not show any division or allocation between Texas and Oklahoma business, or interstate and intrastate commerce.

37

The Court erred in permitting the witness E. A. Steinberger to testify concerning Exhibit No. 32, offered in evidence over the plaintiffs' objection and exception, and sponsored by said witness, because same included property which showed upon its face to not be used or useful in the public service.

38

The Court erred in admitting in evidence Volumes 7 and 8 of defendant's styled Exhibit No. 28, over plaintiffs' objection and exception, which same were vouched for by the witness Ed C. Connor.

39

The Court erred in admitting in evidence defendant's styled Exhibit No. 37, over the objection and exception of plaintiffs, because same did not show any segregation of any kind between Oklahoma and Texas property or business.

40

The Court erred in admitting in evidence defendant's styled Exhibit No. 40, over plaintiffs' objection and exception.

41

The Court erred in admitting in evidence defendant's [fol. 545] styled Exhibit No. 41, sponsored by witness Connor, over plaintiffs' objection and exception, because same did not show any segregation or separation between Oklahoma and Texas business or property.

42

The Court erred in admitting in evidence defendant's styled Exhibit No. 42, sponsored by the witness Connor, over plaintiffs' objection and exception.

• • • • •

[fol. 546]

46

The Court erred in sustaining the defendant's special exceptions as set out in Paragraphs 14, 15, 16 and 17 on pages 65 to 72 of defendant's answer, which same were directed to the first part of Paragraph 9 of plaintiffs' second amended original petition, being the following language which, on account of such special exceptions the Court erroneously struck out:

"That the defendant is attempting to evade the laws of this State and the order of the Railroad Commission of Texas in fixing and prescribing rates and charges for the sale and distribution of domestic and residential gas at the city gates of the various cities and towns served by the defendant in intrastate commerce, and."

• • • • •

[fol. 547]

48

The Court erred in sustaining the defendant's special exception to that portion of plaintiffs' second amended original petition, which reads as follows:

"Nor have the consumers of gas in the various cities and towns served by defendant in intrastate commerce any adequate remedy to protect themselves against the wrongs and unlawful acts herein alleged, and complained of, and."

49

The Court erred in sustaining defendant's special exception to the language appearing in plaintiffs' second amended original petition, as follows:

"And said consumers of domestic and residential gas within the State of Texas."

• • • • •

[fol. 548]

51

The Court erred in sustaining the special exceptions of the defendant, Lone Star Gas Company, to Paragraph 11 of plaintiffs' second amended original petition, wherein it was sought by plaintiffs to recover the difference between the higher forty cent (40¢) rate now in effect and the lower thirty-two (32¢) cent rate which was promulgated by said order of the Railroad Commission of Texas, because under the law plaintiffs in this case, in the event that they should be finally successful, have a right to recover this difference for the use and benefit of the domestic consumers and users of such gas.

52

The Court erred in sustaining the defendant's special exception to the next to the last paragraph of the prayer of plaintiffs' second amended original petition, relative to the refund to the domestic consumers of gas in the event the lower rate should finally be put in force and effect and the order of the Railroad Commission of Texas finally upheld.

53

The Court erred in sustaining defendant's special exception to sub-paragraph 2, Paragraph 8, of plaintiff's second supplemental petition.

54

The Court erred in sustaining the defendant's special exception to Paragraph 9 of plaintiffs' second supplemental petition, and in striking such paragraph out in toto.

The Court erred in sustaining defendant's special exception and in striking out the following language in Paragraph 10 of plaintiffs' second supplemental petition, to wit:

"In this connection plaintiffs would show to the Court that that part of said pipeline that cuts across a portion of the southwestern corner of Oklahoma and thence into the State of Texas was erected at an economic loss, and that at the time same was installed and erected, all economics, practical business and sound judgment would have dictated that said pipeline should have been extended southward and southeasterly within the State of Texas instead of having same to traverse a part of the State of Oklahoma at a great economic loss, as was done by said defendant."

The Court erred in sustaining the defendant's special exception, and in striking from Paragraph 10 of plaintiffs' second supplemental petition the following language, to wit:

"Which would have made said line much more profitable to said defendant than the line that it did erect and install within the State of Oklahoma; that from the time of its installation and to the present time, that part of said pipeline within the State of Oklahoma is maintained at a high expense and great economic loss, which would not in any event have been or be entitled, had the same or should the same be maintained within the State of Texas, as herein alleged."

The Court erred in sustaining defendant's special exception to Paragraph 14. of plaintiffs' second supplemental petition, wherein the following language was stricken out by the Court:

"That the above mentioned methods of treating such gas as comes into the State of Texas from the State of Oklahoma is analogous to the breaking of an original package of merchandise, and."

.

[fols. 553-559] Wherefore, premises considered, on account of the many errors hereinbefore pointed out, plaintiffs pray that their first amended original motion for a new trial be granted, and that such verdict and judgment of the Court be set aside, and that they be awarded a new trial herein.

Plaintiffs further pray for all general and special relief to which they and each of them may be justly entitled.

James V. Allred, Attorney General of Texas; William C. Fitzhugh, Assistant Attorney General; A. R. Stout, Assistant Attorney General, Attorneys for Plaintiffs.

[fols. 560-561] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

ORDER OVERRULING PLAINTIFFS' FIRST AMENDED ORIGINAL MOTION FOR NEW TRIAL—Filed July 26, 1934

On this, the 26th day of July, A. D., 1934, came on to be heard and considered the first amended original motion of the plaintiffs for a new trial in the above entitled and numbered cause:

And such amended motion having been presented to the Court in due time, manner and form, and with due notice, and it appearing to the Court that such motion should be overruled, it is accordingly

Adjudged and Decreed that the same be, and it is hereby in all things overruled:

To which action and ruling of the Court the plaintiffs did then and there in open court duly except, and did then and there in open court duly give notice of appeal to the Court of Civil Appeals for the Third Supreme Judicial District of Texas, sitting at Austin.

C. A. Wheeler, Judge of the 53rd Judicial District Court of Travis County, Texas.

[fol. 562] IN 53RD DISTRICT COURT, TRAVIS COUNTY, TEXAS

[Title omitted]

STIPULATION THAT EXHIBITS INTRODUCED DURING TRIAL MAY
BE CARRIED UP AS A PART OF THE RECORD WITHOUT THE
NECESSITY OF REWRITING THE SAME IN THE STATEMENT OF
FACTS—Filed July 26, 1934

Be It Remembered in the above styled and numbered
cause, on this the 26th day of July, A. D. 1934, that it is
agreed by counsel for the appellants and counsel for the
appellee that the original exhibits introduced in evidence
during the trial of this case may be sent up as a part of the
statement of facts, along with the general record, and that
it will not be necessary for such exhibits to be included by
the Court reporter within the statement of facts proper.

[fols. 563-582] Witness our signatures, this the 26th day
of July, A. D., 1934.

William C. Fitzhugh, Assistant Attorney General;
A. R. Stout, Assistant Attorney General, Attorneys
for Appellants. Ben H. Powell, Karl F. Griffith,
Attorney- for Appellee.

[fol. 583] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

ORDER ALLOWING ALL DOCUMENTARY EVIDENCE AND EXHIBITS
TO BE SENT UP AS A PART OF RECORD, WITHOUT NECESSITY
OF FILING COPIES WITH CLERK OF COPYING SAME WITHIN
STATEMENT OF FACTS PROPER—Filed August 4, 1934.

Whereas, in the above entitled and numbered cause, the
attorneys for all parties have agreed that all original docu-
mentary evidence and exhibits may be sent up in the original
form in and by which the same were introduced in evidence
during the trial of this case; and,

Whereas, the Plaintiffs have requested that said exhibits
and documentary evidence be sent up in their original form;

It is therefore ordered, adjudged and decreed by the
Court that all documentary evidence and exhibits that were
introduced in evidence during the trial of this cause be sent

up by the court reporter in their original form and as the same were introduced in evidence during the trial of this case, and that it shall not be necessary for said court reporter to re-copy such exhibits and documentary evidence [fol. 584] within the statement of facts proper, or file copies of such documentary evidence and exhibits with the clerk of this Court.

C. A. Wheeler, Judge of the 53rd Judicial District Court.

[fol. 585] IN 53RD DISTRICT COURT, TRAVIS COUNTY, TEXAS

[Title omitted]

DEFENDANT'S CROSS ASSIGNMENTS OF ERROR—Filed August 7, 1934

To the Honorable Judge of Said Court:

Comes now the defendant Lone Star Gas Company, and files these its Cross Assignments of Error, as contemplated by law, and would respectfully show:

.

[fol. 586]

5

The court erred in overruling defendant's Plea in Abatement contained in Subdivision 10 Section B of defendant's Second Amended Original Answer, found on pages 34-35 thereof.

.

[fol. 587]

15

The court erred in overruling and in refusing to give defendant's request for a peremptory instruction duly and [fol. 588] timely presented at the conclusion of all the evidence in the case, and after both plaintiffs and defendant had rested, because it appeared from the undisputed evidence, as a matter of law, that the rate of 32 cents prescribed by the Commission in its order of September 13, 1933, was unjust, unreasonable, and confiscatory in this, that if said rate had been in effect during the year 1931, and subsequent accounting periods, defendant would not have earned and

would not have been able to earn the minimum net rate of return to which the Railroad Commission found it was entitled, upon the fair value of its public service property, as determined by the Commission.

Wherefore, defendant was entitled to an instructed verdict and to judgment based thereon.

16

The court erred in overruling and in refusing to give defendant's request for a peremptory instruction duly and timely presented at the conclusion of all the evidence in the case, and after both plaintiffs and defendant had rested, because it appeared from the undisputed evidence, as a matter of law, that the rate of 32 cents prescribed by the Commission in its order of September 13, 1933, was unjust, unreasonable and confiscatory in this, that said rate was based on a determination of the value of defendant's public service property as of December 31, 1931, considering labor and material prices substantially less than those prevailing on the date of the inquiry; and even though it be assumed that the Railroad Commission correctly valued such property as of December 31, 1931, nevertheless, if effect be given to such increased labor and material prices, the Railroad Commission's valuation would be materially increased as of the [fol. 589] date of the inquiry; and if said rate of 32 cents had been in effect during 1931, and subsequent accounting periods, defendant would not have earned and would not have been able to earn anything like the minimum net rate of return to which the Commission found it was entitled upon the fair value of its public service property at the time of the inquiry.

Wherefore, defendant was entitled to an instructed verdict and to judgment based thereon.

17

The court erred in overruling and in refusing to give defendant's request for a peremptory instruction duly and timely presented at the conclusion of all the evidence in the case, and after both plaintiffs and defendant had rested, because it appeared from the undisputed evidence, as a matter of law, that the rate of 32 cents prescribed by the Commission in its order of September 13, 1933, was unjust, unreasonable and confiscatory in this, that if said rate had been

in effect during 1931, and subsequent accounting periods, defendant would not have earned and would not have been able to earn anything like the fair net annual rate to which it was entitled in law, or the minimum net rate of return to which the Commission found it was entitled upon the fair value, at the time of the inquiry, of all of its public service property, wherever located.

Wherefore, defendant was entitled to an instructed verdict and to judgment based thereon.

18

The court erred in overruling and in refusing to give defendant's request for a peremptory instruction duly and timely presented at the conclusion of all the evidence in the [fol. 590] case, and after both plaintiffs and defendant had rested, because plaintiffs wholly failed to prove or offer any evidence to prove, nor was there any evidence in the record upon which it could be found that 32 cents was a reasonable charge to be made by the defendant for gas delivered by it at the city gates of various towns and cities within the State of Texas to which the Lone Star Gas Company supplies gas in intrastate commerce, this being the issue made by plaintiffs' pleadings. Under the undisputed evidence in the case it appears as a matter of law that defendant is engaged in interstate commerce in the State of Texas in the transportation, sale and delivery of natural gas in Texas, purchased or produced in Oklahoma or in Texas, and moving from or through the State of Oklahoma into the State of Texas, and none of the testimony offered by plaintiffs in this case constituted legal or sufficient evidence to raise an issue as to the reasonableness of the Railroad Commission's rate as applied to gas purchased and produced and transported, sold and delivered in intrastate commerce, and hence plaintiffs having failed to prove or offer testimony to support same appearing in the record, defendant was entitled to an instructed verdict and to judgment based thereon.

19

The court erred in overruling and in refusing to give defendant's request for a peremptory instruction duly and timely presented at the conclusion of all the evidence in the case, and after both plaintiffs and defendant had rested, because the only evidence offered by plaintiffs relative to

the value of defendant's public service property, a proper annual depreciation allowance, and the amount available [fol. 591] for return to the defendant during the accounting periods in question, was of no probative force and effect or legal significance in as much as same was predicated upon a segregation of the public service property of the defendant as between property located in Texas and property located in Oklahoma without reference to the use to which the property in Texas was put by the defendant, and upon a segregation of revenues received by the defendant from the sale of gas in Oklahoma and Texas and without reference to the source of such gas or the means and method and route by which it was transported to the places of delivery in Texas even though as a matter of law based upon the undisputed testimony in the case it appeared that a substantial portion of the entire amount of gas sold by defendant in the State of Texas was either produced or purchased in Oklahoma and transported to the points of delivery and sale in Texas in interstate commerce or was produced or purchased in Wheeler County, Texas, and transported to the points of delivery and sale in Texas through Oklahoma and back into the State of Texas in interstate commerce, and that the pipe lines used to transport said gas extended from and through the State of Oklahoma and into the State of Texas.

Wherefore, plaintiffs wholly failed to make out a case entitling them to go to the jury, and defendant was entitled to an instructed verdict and to judgment based thereon.

20

The court erred in overruling and in refusing to give defendant's request for a peremptory instruction duly and timely presented at the conclusion of all the evidence in the case, and after both plaintiffs and defendant had rested, because it appeared from plaintiffs' own testimony that the [fol. 592] rate of 32 cents prescribed by the Commission in its order of September 13, 1933, was unjust, unreasonable, and confiscatory in this, that even adopting plaintiffs' valuation of defendant's public service property located in Texas, and assuming that such a valuation is of probative force and effect under the issues made in this case, nevertheless, if said rate had been in effect during 1933 and 1934, defendant would not have earned as much as the minimum net rate of return to which the Railroad Commission found it

was entitled. Hence, on the basis of plaintiffs' own testimony, defendant was entitled to an instructed verdict and to judgment based thereon.

21

The court erred in overruling and in refusing to give defendant's request for a peremptory instruction duly and timely presented at the conclusion of all the evidence in the case, and after both plaintiffs and defendant had rested, because the only testimony offered in this case as to the present fair value of defendant's public service property used and useful in the conduct of defendant's intrastate business within the State of Texas, was testimony of the defendant, plaintiffs offering no testimony whatsoever of a segregation of property or revenues according to the kind and character of business being carried on by the defendant in the State of Texas; and it appeared from such testimony that even assuming the annual depreciation allowance and the net annual rate of return fixed by the Railroad Commission were reasonable, nevertheless the rate of 32 cents prescribed in the Commission's order would not be sufficient and was not sufficient at the time of the inquiry to permit the defendant to earn a fair rate of return upon the fair value of its property used and useful in the conduct of its [fols. 593-594] intrastate business in Texas, or even as much as the minimum net annual rate of return found by the Commission to be fair, and said rate as a matter of law is unjust and unreasonable and confiscatory of defendant's public service property used in the conduct of its intrastate business in Texas.

Wherefore, defendant was entitled to an instructed verdict and to judgment based thereon.

[fol. 595]

23

The court erred in overruling and in refusing to give defendant's request for a peremptory instruction duly and timely presented at the conclusion of all the evidence in the case, and after both plaintiffs and defendant had rested, because it appeared from the statement of the Railroad Commission of Texas attached to the opinion and order of the said Commission, marked Exhibit "A" and referred to in plaintiffs' second amended original petition, that defend-

ant was engaged in the production and sale at wholesale of natural gas, engaging in both interstate and intrastate commerce in the sale of gas to some 300 cities and towns in the states of Oklahoma and Texas. The order of the Railroad Commission undertook to fix a reasonable rate for all of the gas supplied by the defendant to the various distributing companies. A part of the gas being delivered by the defendant at the city gates of various towns and cities in Texas at the time of the investigation of the Railroad Commission, and at all times in question was being transported uninterruptedly through defendant's high pressure pipe lines from and through the State of Oklahoma into the State of Texas. The business of transporting natural gas uninterruptedly through defendant's high pressure pipe lines from the State of Oklahoma into the State of Texas, and from the State of Texas through Oklahoma and back into the State of Texas is national in character and constitutes interstate commerce and transportation, and also constitutes a substantial portion of defendant's entire natural gas business. The order of the Railroad Commission was intended to and did, in fact, prescribe the rate to be charged for all gas sold by the defendant, including interstate gas, and thereby prevented the [fols: 596-600] defendant from charging and receiving the price for interstate gas which it was charging and receiving, and, therefore, was a burden upon a direct regulation of interstate commerce. The order of the Railroad Commission therefore was void insofar as it related to interstate commerce, and gas sold by the defendant moving in interstate commerce under the Commerce Clause of the Federal Constitution, and, being void in part, and being indivisible in character, it was void in its entirety and could not be enforced in whole or in part by the plaintiffs in this suit.

Wherefore, defendant was entitled to an instructed verdict and judgment of the court entered thereon.

The court erred in overruling and in refusing to give defendant's request for a peremptory instruction duly and timely presented at the conclusion of all the evidence in the case, and after both plaintiffs and defendants had rested, because plaintiffs wholly failed to make out a case showing

irreparable injury or calling for the exercise of the equitable jurisdiction of the court.

Karl F. Griffith, Thompson & Barwise, Ben H. Powell,
Marshall Newcomb, Attorneys for Defendant, Lone
Star Gas Company.

[fols. a-2] IN DISTRICT COURT OF TRAVIS COUNTY

[File endorsements omitted]

No. 53,033

THE STATE OF TEXAS

VS.

LONE STAR GAS COMPANY

**Statement of Facts of Hearing on Plea in Abatement and
Pleas to Jurisdiction**—Filed September 7, 1934; Filed in
C. C. A., September 12, 1934

[fol. 3] E. F. SCHMIDT, a witness produced by the defend-
ant, being first duly sworn, testified as follows:

Direct examination.

By Mr. Griffith:

[fol. 4] Q. In the performance of your duties as general
superintendent of the Lone Star Gas Company, would you
say that you have a general familiarity with all of the
ramifications of the Company's business operations relat-
ing to the production, transportation and sale, and whole-
sale, of natural gas?

A. I have.

Q. Mr. Schmidt, have you prepared any data in written
form, to be submitted to this court, showing the general
scope of the operations of the Lone Star Gas Company at
the present time and for a number of years past?

A. I have.

215

Q. Together with a pipe line map, showing the intergrated pipeline system of the Company, its sources of gas supply, and routes over which the gas travels?

A. I have, yes, sir.

[fol. 5-7] Q. Is this the compilation of data to which you refer?

A. Yes, sir.

Q. And is the data therein collected and set forth correct, including the pipeline map which appears there and all the compiled data?

A. It is.

Mr. Griffith: If Your Honor please, we now offer in evidence said compiled data, identified by the witness E. F. Schmidt.

[fol. 8] Mr. Griffith:

Q. Turn to the compilation of data which has just been introduced in evidence and styled Defendant's Exhibit No. 4. What is shown on the first page, styled, "Five year summary Gas transportation, Lone Star Gas Company"?

A. The amount of gas transported through Oklahoma by years, the quantity of gas transported on the entire system and percentage of gas transported in interstate commerce.

Q. Does that sheet purport to be, and is it, a summarization of the five sheets immediately succeeding?

A. It is.

Q. On the following page, under the year 1929, do you show the gas transported in interstate commerce by the Lone Star Gas Company?

A. I do.

Q. Where are the Chicasha and Nellie fields, referred to in Defendant's Exhibit 4?

A. In Oklahoma.

[fol. 9] Q. In the State of Oklahoma?

A. Yes.

Q. In what counties?

A. Grady and Cotton counties.

Q. Where is the Duncan field located?

A. In Stephens County, Oklahoma.

Q. Where is the Loco field located?

A. In Stephens County, Oklahoma.

Q. Where is the Fox field located?

A. In Carter County, Oklahoma.

Q. Where is the Robberson field located?

A. In Garver County, Oklahoma.

Q. Where is the Palacine field located?

A. Stephens County, Oklahoma.

Q. Where is the Shamrock field located?

A. Wheeler County, Texas.

Q. Does gas moving from the Shamrock field in Wheeler County, Texas, pass through the state of Oklahoma and thence back into the state of Texas?

A. It does.

Q. Is that shown by the pipeline map which is at the end of this compilation of data known as Defendant's Exhibit 4?

A. It does.

Q. At the bottom of the page covering operations for the year 1929, do you show that the total of gas transported by the Lone Star Gas Company from all sources was 44,625,913 M cubic feet?

A. That is correct.

Q. And the amount transported through Oklahoma was 15,790,131,000 cubic feet?

A. That is correct.

[fol. 10] Q. And that the total of gas transported in interstate commerce was 35.4 percent?

A. That is correct.

Q. Similarly, what do you show on the succeeding page covering the year 1930?

A. Total gas transported through Oklahoma 14,087,358,000; gas transported on entire system 42,472,195,000, or 33.2 percent transported in interstate commerce.

Q. On the succeeding page, covering 1931 operations—that is, operations for the year 1931, what do you show?

A. Gas transported through Oklahoma 9,972,671,000. Gas transported from all sources 34,703,119,000 or 28.7 percent transported through Oklahoma.

Q. On the next page, covering operations of the Company for the year 1932, what do you show?

A. Gas transported through Oklahoma, 10,397,693,000.

Q. Is it not 597?

A. Yes, sir; 10,597,693,000. That is correct. The total gas transported from all sources 32,967,130,000 or 32.1 percent transported through Oklahoma.

Q. Similarly, what do you show on the next page covering the operations for the year 1933?

A. Total gas transported through Oklahoma 8,138,480,000. Total gas transported 31,385,293,000 or a percentage of 25.9 transported through Oklahoma.

Q. All of the data which has been set forth in these several pages, covering the years 1929 to 1933 inclusive, has been summarized on the first sheet, exclusive of the title sheet, of this compilation of data?

A. That is correct.

[fol. 11] Q. And it shows weighted average per cent transported through Oklahoma 31.5 for the five-year period covered?

A. That is right.

Q. Throughout this compilation of data, wher-ver you show, as for example covering the year 1929 Chickasha and Nella fields, 2,981,976 M, does that signify the amount of gas purchased by the company in those fields for the year in question and which gas was transported in the high pressure pipelines of the company, running into the State of Texas?

A. That is correct.

Q. Would a similar explanation be given in respect of the Duncan, Loco, Fox, Robberson, Palacine and Shamrock fields?

A. That is right.

Q. Except that the Shamrock field is in Wheeler County, Texas?

A. That is correct.

Q. Will you refer to the map which appears at the end of this compilation of data? Will you please explain to the court what this map represents?

A. It represents the pipeline system of the Lone Star Gas Company in the states of Texas and Oklahoma. The yellow line on the map indicates the Oklahoma-Texas boundary line. The lines in red are the lines transporting gas from Oklahoma into Texas and the blue lines indicate the lines in Texas.

Q. What is denoted by the circles which appear right under the Red River boundary line and in connection with numerous municipalities?

A. The red circles are encircling towns and cities in Texas whose consumption during the year 1933 was equivalent to the gas transported in interstate commerce, with the exception of Fort Worth and Dallas, where in Fort Worth,

approximately fifty percent of the gas was interstate commerce, [fol. 12] and in Dallas about one-third.

Q. Now, Mr. Schmidt, in the usual and ordinary conduct of its business, does the Lone Star Gas Company transport natural gas through its pipeline system, as its existence is determined by this map, from the various gas fields in the State of Oklahoma and from the Shamrock field in Wheeler County, Texas, to the city gates of the various municipalities which you have circled on this map?

A. They do.

Q. Is that gas transported continuously from the field to the city gates of these numerous municipalities in high pressure pipelines?

A. It is.

Q. Is delivery and sale thereof, made at wholesale, made at the city gates of these several municipalities?

A. That is correct.

Q. Is the forward flow of the gas continuous from the time it leaves the gas well or gas field until delivery is made at the city gates station?

A. It certainly is.

Q. At the city gate station, what disposition is made of the gas?

A. At the city gate station, the pressure is reduced, the gas is measured, and delivered at a pressure of twenty-five, to varying perhaps as high as fifty pounds, to the distributing plant.

Q. Is that reduction in pressure made for the purpose of accommodating the distributing operation of the various companies?

A. It is.

Q. In all cases, Mr. Schmidt, does the Lone Star Gas Company deliver the gas at wholesale at the city gates?

A. They do.

[fol. 13] Q. And title to such gas passes at the city gate?

A. That is correct.

Q. That would be true of all towns except the city of Fort Worth, where the company is engaged in local distribution?

A. That is right.

Q. With that qualification, your answer would stand?

A. That is right.

Q. Refer again to the map at the end of the compilation of data, known as Defendant's Exhibit 4. What is the size

of the pipeline extending from Wheeler County, Texas, in the Shamrock field, in a southeasterly direction into the State of Oklahoma and thence in a southeasterly direction to the city of Wichita Falls and beyond?

A. Eighteen-inch.

Q. Is that what is known as a high pressure pipeline?

A. It is.

Q. What are the pressures carried on that pipeline?

A. From 400 pounds in the field to delivery pressure at the city gates.

Q. What is the pressure at the city gates before the pressure is reduced for the purpose of making delivery to the local distributing companies?

A. That will vary from 350 pounds to about 100 pounds.

Q. Refer, please, again to the map at the end of Defendant's Exhibit 4. There would appear to be two pipelines coming south out of Oklahoma, through Cotton County, Oklahoma.

A. That is correct.

Q. What are the sizes of those two pipelines?

A. They are each twelve inches in diameter.

Q. Are those lines operated at high pressure?

[fol. 14] A. They are.

Q. Will you next look at the line which appears to come in a southeasterly direction through Love County, Oklahoma to Gainesville, Texas and beyond. What is the size of that pipeline?

A. Sixteen inches in diameter.

Q. Is that a high pressure pipeline?

A. It is.

Q. What pressure is carried on that pipeline?

A. From 400 pounds to 350 pounds approximately.

Q. Now, Mr. Schmidt, referring again to this map, in the usual and ordinary course of business of the Lone Star Gas Company, from what source do the towns and cities of Wichita Falls, Iowa Park, Electra, Oklaunion, Vernon, Talbot and Chillicothe receive their gas supply?

A. From Wheeler County.

Q. Through the eighteen-inch line from Wheeler County into Oklahoma, and back into the State of Texas?

A. That is correct.

Q. Refer to the sixteen-inch line which you have identified as coming out of Love County, Oklahoma to, or near to, the city of Gainesville, Texas and beyond. From what

source, in the usual conduct of the defendant's business, does the city of Gainesville, Muenster, Saint Jo and other municipalities west of Gainesville and including Gainesville, receive their gas supply?

A. From Oklahoma fields, the Fox field, Loco field, Palacine field and Robberson field.

Q. Does the amount of gas moving through the State of [fols. 15-18] Oklahoma and into the State of Texas vary and depend upon changes in temperature and the demands for gas supply?

A. It does.

Q. The demands of the several distributing companies?

A. That is correct.

Q. And one volume of gas may be transported today and a different volume transported tomorrow, due to temperature changes?

A. That is right.

Q. What is the purpose of the Lone Star Gas Company reducing the pressure of gas at the city gates of the several municipalities where delivery is made to local distribution companies?

A. It is necessary to reduce pressure in order to make it safe for use in domestic consumption and for delivery into the distribution system of the city plants.

Q. At what pressure is the gas distributed by the local distributing companies to the domestic and residential customers served by said plants?

A. The low pressure, from two to eight ounces—six ounces.

* * * * *

[fol. 19] Q. You don't mean to say that every town where you have a red line drawn around, is served exclusively with Oklahoma gas, do you?

A. No, sir.

Q. What is the amount of business done in Texas as compared to the amount of business done in Oklahoma per annum?

A. I don't know what you mean by business.

Q. I mean the amount of revenue taken in.

A. I don't know.

Q. Have you any idea?

A. No, sir.

Q. Now, in computing your statement that you have here, you include the Wheeler field in Texas as gas coming from Oklahoma.

A. As gas transported through Oklahoma.

Q. That little narrow line up there?

A. That is right.

Q. But the gas is produced in Texas, isn't it?

A. I testified so.

Q. I just wanted to make it clear. Isn't it true and isn't it a fact that you have practically the largest gas reserves in the world in Texas?

A. We have?

Q. Yes.

A. I don't think so.

[fol. 20] Q. Don't you have more than enough than is necessary or adequate to serve the State of Texas?

A. No, sir.

Q. Gas reserves.

A. No.

Q. You don't have more than enough up in the Panhandle field alone to serve Texas?

A. I don't think so.

Q. Don't you have more than is adequate to serve the entire United States?

A. No, sir.

Q. Don't you serve a great deal of the North and as far as Chicago and Denver with gas from the Panhandle field?

A. We don't.

Q. Don't it come from there?

A. Yes, sir.

Q. What is the percentage of gas reserves in Oklahoma as compared with gas reserves in Texas, owned by your company?

A. I don't know.

Q. Have you no idea about that?

A. No, sir.

Q. For the sake of argument, or rather forgetting about the gas transported across that narrow neck up from the Panhandle field, how much gas is produced in Oklahoma as compared to the gas produced in Texas per annum?

Mr. Griffith: What do you mean? By the Lone Star Gas Company?

Mr. Stout: Yes, sir. How much does your company produce per annum in Texas, as compared to what it produces per annum in Oklahoma?

[fol. 21] A. I don't have any figures on that at all.

Q. You just don't know anything about that either?

A. I don't have that figure.

Q. About all the gas practically that ever comes into Texas from Oklahoma is compressed or re-compressed somewhere along the line?

A. Not all of it.

Q. Practically all of it.

A. No.

Q. Didn't you so testify the other day?

A. No, sir. All the gas from the Fox field is not compressed.

Q. Which field is the Fox field?

A. It is the one in Carter County, Oklahoma.

Q. What amount, coming from the Fox field, that finds its way into Texas—what amount is ever compressed?

A. Sometimes a very small amount is compressed.

Q. What average, if you know?

A. On a peak load, possibly less than five per cent is compressed.

Q. What kind of load?

A. Peak load.

Q. When it is not a peak load, how much is compressed?

A. Depends on conditions, whether we are running that compressor station or not.

Q. On the one running through Petrolia, is all of that compressed?

A. Not in getting into Texas, no.

Q. Is it compressed after getting into Texas at Petrolia?

A. Yes, sir.

Q. Isn't that what I asked you?

A. I didn't think so.

Q. It is all compressed in Petrolia at the time it makes another step.

[fol. 22] A. That is correct, except in the summer time we often bring gas from Shamrock.

Q. That is not in Texas.

A. Yes, sir; but we bring it down from Oklahoma without any compressing.

Q. But all that comes from Oklahoma is compressed except what comes from Shamrock?

A. No. Sometimes in the summer we get some from Chicasha without compressing.

Q. None of it is ever compressed?

A. I didn't say that. I said part of it sometimes is not compressed.

Q. Your company has a monopoly on all this gas that comes into Texas on its lines?

A. I don't know what you mean.

Q. Allright, if you don't know what it means. You have got control of the pipes, haven't you?

A. Yes, sir.

Q. You can do anything with it you want to.

A. Not anything. We have to take care of the loads through these various lines as the demand occurs.

Q. When the gas starts out from the field in Oklahoma, do you know where the ultimate destination of it is going to be?

A. Not definitely.

Q. And when it starts out at that field, you don't know what place it is going to?

A. Not exactly.

Q. It is just in your pipe and you have got control of it?

A. Yes, sir.

[fols. 23-25] Q. Another thing—when you compress this gas, you make gasoline out of it, too?

A. Not when we compress it, no, sir.

Q. Do you make any at all?

A. No, sir, not by compression.

Q. Tell how you do make it and when?

A. We make gasoline by the absorption method.

Q. When, where and how?

A. On all of the lines coming down from Oklahoma, we extract the hydrocarbons that would normally condense in the line and cause stoppage and interfere with service. We take those hydrocarbons out.

Q. That is all the gas that comes from Oklahoma into Texas?

A. Yes, sir.

[fol. 26] Cross-examination.

By Mr. Fitzhugh:

Q. Referring to your map, Mr. Schmidt, where is the Robberson field?

A. It is in Garvin County, Oklahoma.

Q. It is at the norther-most trip of the red line shown for the G-16 inch?

A. That is right.

Q. North and east of the Robberson field, you have some more lines in Oklahoma, have you not?

A. Yes, sir.

Q. Where does that gas come from?

A. Comes from the Fox and Robberson fields.

Q. Those lines serve some very sizeable towns in Oklahoma, do they not?

A. They are rather small towns.

Q. Including Elmore City, Hoover, Sulphur, Pauls Valley, Maysville, Lexington, and others?

A. That is correct.

Q. How much gas did those towns consume in the year 1933?

A. I don't have any figures on that.

Q. You are superintendent, aren't you?

A. Yes, but I don't have the figures here.

Q. About how much?

A. I couldn't estimate it.

Q. Couldn't give us any guess at all?

A. No, sir.

[fol. 27] Q. It was in excess of 300,000 M. C. F. for the year, wasn't it?

A. I don't think so.

Q. About how much was it?

A. I don't have any figures here at all.

Q. Refer to your sheet in your exhibit number four for the year 1933. How much gas do you show was produced and purchased in the Robberson field for that year?

A. Robberson field, 207,807,000.

Q. Isn't it possible that all that gas and some more besides, that came from the Fox field, was necessary to supply those towns shown on the black portion of the line "G" in Oklahoma for the year 1933?

A. No, sir.

Q. Can you tell approximately, anywhere near to correct figures, how much the production from the Robberson field exceeded the amount needed by those towns in Oklahoma on the dark sections of the line "G"?

A. No, I don't have any figures of that kind here at all.

Q. Do you know how much gas produced and purchased in the Robberson field ever got as far as Texas state line?

A. Approximately 207,000,000.

Q. Some of that has to be used in Oklahoma, doesn't it?

A. Not necessarily.

Q. Why do you say that?

A. Because there are times when we are taking gas from that field in both directions.

Q. Where in the world are these towns on the dark portion of the line "G"—Oklahoma towns—where in the world do they get their gas? Didn't you say from the Robberson and Fox fields?

[fol. 28] A. That is correct.

Q. Doesn't it stand to reason some gas had to go from those fields to supply them?

A. Possibly so.

Q. Doesn't that take off some of the gas that you said went into Texas?

A. And it is offset by the amount that goes back into Oklahoma from various points.

Q. Coming from Texas into Oklahoma?

A. Yes, sir.

Q. Give us some approximate figures.

A. I don't have any exact figures here.

Q. You don't know, then, do you?

A. Only from that territory, my judgment is that is correct.

Q. How much of the 653,527 M. C. F. of gas produced and purchased in the Fox field in Oklahoma ever reaches the Texas state line?

A. Practically all of it.

Q. Haven't you just testified some of that gas is used by Oklahoma towns?

A. Small part of it. I said practically all of it.

Q. Beside all of the towns I referred to, being towns on the dark shaded portion of your line on your map, there are the towns of Marietta and Asphaltown—

Mr. Griffith: No.

Mr. Fitzhugh: Isn't that on your line?

Mr. Griffith: No.

Mr. Fitzhugh: —Dixie—I don't know as I can trace all the towns.

A. About three customers at Dixie.

[fol. 29] Q. But there are some other towns on the red shaded portion of the line "G" that are served in Oklahoma?

A. I don't think so.

Q. How about Marietta?

A. Except Marietta.

Q. That is a pretty sizeable town?

A. It is a small town.

Q. More than three customers there, aren't there?

A. It is a small town.

Q. You say that all of that six million cubic feet of gas produced and purchased in the Fox field reaches the Texas line?

A. Practically all of it.

Q. And you say that, because you offset that with gas that moves from Texas to Oklahoma?

A. Yes, sir.

Q. How much of the gas produced in Oklahoma, without any offsets, reaches the boundary of Texas?

A. Substantially all of it.

Q. In order to say that, you have to regard all the Oklahoma towns as being served exclusively with Texas gas, don't you?

A. I didn't quite understand.

Q. You are trying to say, if I understand you correctly, that all the amounts you show on your exhibit for the Roberson field and the Fox field and all other Oklahoma fields, is not diminished consumption, and that virtually all of it reaches Texas?

A. That is approximately correct.

Q. In order for that to be true, you have to regard all the Oklahoma towns as being served exclusively with Texas gas, don't you?

[fol. 30] A. Well, they are not served with Texas gas. I don't know that that is the conclusion you have to draw.

Q. No diminution of the supply taken from Oklahoma, and still you serve towns in Oklahoma—then those towns must be served from some other source in Oklahoma?

A. I think so.

Q. Which isn't the truth.

A. Yes, because the figures are close to being correct.

Q. Your Oklahoma gas and Texas gas, if there is any back and forward surge of gas, is all mixed up?

A. Yes, sir.

Q. You don't know which is Texas gas and which is Oklahoma gas, do you?

A. Not exactly.

Q. Referring to the same sheet still, 1933, all of the fields listed on that sheet, with the exception of the Shamrock field, are Oklahoma fields, are they not?

A. That is correct.

Q. Now, all of the fields, except the Shamrock field, if my figures are correct, add up to be 1,690,340 M.C.F.; and that would represent, would it not, all the Oklahoma gas purchased and produced by your company in 1933?

A. I think so.

Q. Don't you know, as a matter of fact, and don't the records of your company show, that one million M.C.F. of gas was consumed by your Oklahoma towns for the year 1933?

A. No, I don't know. I am sure that is wrong.

Q. To be exact, the figures are 1,135,394 M.C.F. Isn't that correct? That would be one billion cubic feet.

[fol. 31] A. Consumption in Oklahoma?

Q. Yes.

A. I wouldn't think it was anywhere near that.

Q. Do you have any figures on that?

A. No.

Q. Could you check our figures?

A. I have not got the information here, no, sir.

Q. If those are correct figures, there would remain then about 500,000 M.C.F. of your Oklahoma gas for consumption any place else than Oklahoma; isn't that correct?

A. If those figures are correct.

Q. Would you make a check of those figures for us to see if they are correct?

A. I have no way of doing it here.

Q. Passing from line "G" to "H" and "2nd H"—is there ever any change of gas passing through lines "H" and "2nd H"?

A. No, sir.

Q. All that gas comes south from Oklahoma into Texas?

A. That is correct.

Q. I believe you say that is not the condition on line "G"; that there is a change of direction of the gas there. Sometimes going from Texas to Oklahoma and sometimes from Oklahoma to Texas?

A. No, I didn't say that.

Q. Does all gas in line "G" come south at all times?

A. There might be a very short interval when it flows north.

Q. There are occasional changes in the direction, in the gas passing through line "G"?

A. Very seldom.

Q. On the occasions when gas in line "G" is passing from Texas into Oklahoma, that would show that the gas produced in Oklahoma from the Robberson, Fox and other fields on those lines was insufficient to serve Oklahoma towns and that some additional gas was needed from Texas in order to serve them?

A. Or it might be trouble in the line—blow-out or stoppage somewhere.

Q. You mean to say every time that gas passes from Texas to Oklahoma that was the reason, trouble in the lines?

A. It has been a very few times that I know of.

Q. Wasn't it because the Oklahoma production was insufficient to furnish the Oklahoma consumption?

A. I should think that would be the main reason.

Q. Now, on your map, from Oklahoma or points close to there on line "A", you have line "A-1-6" "that runs north and slightly east across the Texas line into the state of Oklahoma.

A. That is correct.

Q. All the gas used by line "A1-6" comes from line "A" in Texas?

A. Yes, sir.

Q. And is gas from the Shamrock field?

A. That is right.

Q. That is, on line "A1" there are no gas fields or production in the State of Oklahoma?

A. No, sir.

Q. How much gas passed from Texas through line "A1" into Oklahoma in the year 1933?

A. I don't have any figures on that.

Q. That is the gas that you are relying on, isn't it, to offset what you say passes from—the gas that you say is offset, passing from Texas into Oklahoma?

A. That, and other towns.

Q. Sir?

[fol. 33] A. That line, and other towns in Oklahoma that are supplied from Texas.

Q. What are the other towns? Are you talking about line "E"?

A. Yes, sir.

Q. On line "E 5", that goes from Denison, Texas across Oklahoma line to serve Durant and towns in that vicinity?

A. That is correct, and also a line to Hugo.

Q. And the line at Hugo, being "E-16", going from Paris, Texas across the line to Hugo?

A. That is correct.

Q. In both of those last two lines, gas passes always in a northerly direction from Texas into Oklahoma?

A. Yes, sir.

Q. In those three instances, "E-16", "E-5" and "A-1", are the lines having Texas gas going into Oklahoma and which you used as offsets while ago in answering questions put to you?

A. Yes, sir, that is correct.

Q. And you are unable to give us, you say, figures on the amount of gas passing through those lines from Texas into Oklahoma for the year 1933?

A. I don't have them here.

Q. Those figures are part of the records of the company and are just as much available as those you cite in your exhibit, are they not?

A. I think so, yes, sir.

Q. Mr. Schmidt, does any Oklahoma gas ever reach the city of Dallas, Texas?

A. Yes, sir.

Q. What lines does that gas come from?

[fols. 34-36] A. That can come down line "F" or line "C" between Fort Worth and Dallas or "J-2" between Fort Worth and Dallas.

Q. What is the proportion of Oklahoma gas to the total amount in the line serving Dallas?

A. That would be pretty hard to tell.

Q. You can approximate it, can't you?

A. No; I don't know how you could tell.

Q. Do you know the figures for Fort Worth?

A. No, sir.

Q. Can you tell what the proportion of Oklahoma gas is to the total gas being consumed at Fort Worth?

A. I don't know exactly, no, sir.

Q. Wouldn't it be just a fraction of one per cent?

A. No, it would be a substantial percentage.

Q. Would it be as much as one per cent of the total volume of gas?

A. Yes; it might be one hundred per cent.

Mr. Griffith: As of any special time?

A. That is right.

Mr. Fitzhugh: Besides lines "A", "H", "2nd H" and "G"—the four lines that run into Oklahoma, the company has a number of other lines?

A. Yes, sir.

Q. On your map you show lines going into West Texas. There are a number of fields in that section of Texas?

A. Yes, sir.

Q. And you get a substantial production from Company reserves, as well as purchase a great deal of gas in those areas, do you not?

.

[fol. 37] The Court: You have a number of blue lines indicated on the map, in Texas, connected with different pumps on gas fields in West Texas?

Mr. Shannon: Yes, sir.

The Court: What per cent of these lines are in Texas, as compared with Oklahoma?

Mr. Shannon: I am not prepared to answer.

The Court: A large part of it is in Texas?

The Witness: Yes, sir, quite a large part.

The Court: Then, you take the position, do you, Mr. Shannon, that while all this country out in West Texas is more or less covered with these connecting lines, that if you run one line up into the Chickasha territory and get gas from that territory, that becomes interstate commerce?

Mr. Shannon: Yes, sir.

The Court: Does that taint the entire field, then—all this territory?

Mr. Shannon: We are not contending that under appropriate circumstances and appropriate proceedings the [fols. 38-39] Railroad Commission might not have jurisdiction and authority to fix a rate on gas moving exclusively in intrastate commerce. We do not think it necessary for us to take that position here.

.

[fol. 40] Q. At any rate, as shown on your map, Mr. Schmidt, it is not your contention, is it, that any of the lines south of Fort Worth or Dallas or west of Fort Worth are served by any Oklahoma gas or a mixture of Oklahoma and Texas gas?

A. You are covering quite a little territory. There are times when that is undoubtedly true.

Q. Maybe we can get at it this way. Is there ever any Oklahoma gas passing through your lines in the lines west of Joshua, Texas?

A. There has been.

Q. Is there any now?

A. Not today.

Q. Was there any in 1933?

A. I don't think so.

Q. Has there been any in 1934 so far?

A. No, sir.

Q. Would there ever be any gas current west of Joshua from Oklahoma until and unless the fields in West Texas play out?

A. Unless we had an accident on the lines which would cause it to go down that way.

Q. The ordinary current of gas would be easterly instead of westerly?

A. That is correct.

Q. That is, you never would have any Oklahoma gas at Abilene or Baird or Putnam or Breckenridge or Ranger or that section out there?

[fols. 41-45] A. Not at the present time.

Q. Would you be likely to have any at Waco or towns on that line south of Fort Worth?

A. We have had.

Q. When was the last time you served that section with gas, part of which was Oklahoma gas?

A. 1929.

Q. But since that time you have not served them with Oklahoma gas?

A. Not that I know of.

Q. About the line that comes south from Dallas down to Corsicana and that section?

A. We have served gas from Oklahoma several times through those lines.

Q. Recently?

A. In 1932. Not in 1933.

Q. Or in 1934?

A. No, sir.

Q. Now, at every point where your line goes across the state line, you have a meter, do you not?

A. No, sir.

Q. Well, if you don't have a meter at the state line, you have one somewhere close so you can always tell how much gas passes over the state line; isn't that true?

A. Not in the case of the Panhandle line.

Q. With that one exception, you would be able to tell the amount of gas passing over the state lines?

A. That is correct.

[fol. 46] The Court: Take Oklahoma part away from that would show the balance, wouldn't it?

Mr. Fitzhugh: Yes, sir, but the witness says he doesn't know the amount and cannot take it away. He cannot show in this exhibit, as he says he does, the per cent that is interstate commerce.

The Court: It shows the amount he says comes from Oklahoma.

Mr. Fitzhugh: No, it doesn't, by his own testimony.

The Court: From this statement here in this paper—

Mr. Fitzhugh: He has it headed, "For the year 1933, Gas transported in interstate commerce". Now a whole lot of gas he has in this exhibit is intrastate, produced in Oklahoma and used in Oklahoma, and he doesn't know the [fols. 47-50] amounts of it. The whole thing is misleading.

The Court: These words appear here, as I see it, "Total gas transported through Oklahoma."

Mr. Fitzhugh: In interstate commerce. That is the catch. There is no interstate commerce in gas that comes from this little field on up north into Oklahoma and that gas is all in this exhibit.

The Court: Where those words appear: "Total gas transported through Oklahoma"—does that have reference to gas brought from Oklahoma to Texas?

The Witness: I have in mind gas transported from Oklahoma into Texas and back into Oklahoma and approximately offset with consumption in Oklahoma, and I think it does very closely. It was almost impossible to make those figures exact and these percentages would be as close as anybody could get them.

Mr. Fitzhugh: Isn't it a fact that your heading: "Gas transported in interstate commerce" is absolutely misleading?

A. I don't think so.

Q. I think ordinary candor would allow that admission.

Mr. Stout: I want to further object to the exhibit, wherein it seeks to state what is interstate commerce, because it is a conclusion of law, which this court only can determine, and because it is an incorrect attempt to state the law and incorrectly arrived at, and this witness is not competent to pass on an intricate matter as interstate and intrastate commerce.

Mr. Griffith: We are striking the words "interstate commerce" from the exhibit, with the permission of the court.

The Court: Yes, sir.

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[fol. 51] KARL F. GRIFFITH, being first duly sworn, testified as follows, to-wit:

Direct examination.

By Mr. Stout:

Q. Your name is Karl F. Griffith?

A. My name is Karl F. Griffith.

Q. What is your business?

A. Well, I would say that my business consists of about fifty per cent of practice of law and the remaining fifty per cent is devoted to attempting to be a public utility executive.

Q. Fifty per cent that business and fifty per cent law?

A. That would be approximately correct.

Q. Mr. Griffith, are you a share holder in the Lone Star Gas Corporation?

A. I am.

Q. Are you a director?

A. I am.

Q. Are you an officer?

A. I am.

Q. How many directors, and who are they, in that?

A. Mr. George W. Crawford, T. B. Gregory, David E. Mitchell, J. M. Simpson, all residing at Pittsburgh, Pennsylvania; R. A. Crawford, L. B. Denning and myself, residing at Dallas.

Q. 1915 Wood Street?

A. That is the business address of Mr. R. A. Crawford, Mr. L. B. Denning and myself.

Q. That is where you gentlemen transact business?

[fol: 52] A. In reality, we transact business at 301 Harwood Street, but 1915 Wood Street is our mail address.

Q. The Lone Star Gas Corporation, does it have a permit to do business in Texas?

A. It does not.

Q. Is it a Delaware chartered corporation?

A. It is.

Q. What per cent of stock does the Lone Star Gas Corporation—I mean voting stock—own in the Lone Star Gas Company?

A. Something in excess of ninety-nine per cent. There are a number of shares outstanding of the capital stock of the Lone Star Gas Company in the hands of the public, but in excess of ninety-nine per cent is owned by the Lone Star Gas Corporation.

Q. In excess of ninety-nine per cent of the Lone Star Gas Company's voting stock is owned by the Lone Star Gas Corporation?

A. That is correct. All of the stock of the Lone Star Gas Company is voting stock.

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[fol: 53] Q. Mr. Griffith, what other companies in Texas does the Lone Star Gas Corporation own any interest in?

A. The Municipal Gas Company, The Stamford and Western Gas Company, the Community Natural Gas Company and the Texas Cities Gas Company.

Q. The Dallas Gas Company?

A. No, the Lone Star Gas Corporation does not directly own any stock in the Dallas Gas Company or the County

Gas Company. However, what you desire, I assume, is to be informed as to the ownership.

Q. Yes, sir.

A. The Lone Star Gas Corporation owns all, or substantially all, of the common capital stock of the Dallas Gas Corporation, which corporation in turn owns a majority of the capital stock of the County Gas Company and the Dallas Gas Company.

Q. Yes, sir—are those all the companies the Lone Star Gas Corporation owns a voting interest in, in Texas?

A. It has just been suggested that the Lone Star Gas Corporation owns the Galveston Gas Service Company, or substantially all of its stock. As a matter of fact, the ownership is not direct; the Lone Star Gas Corporation owns all, or substantially all, of the stock of the Galveston Gas Shares, Inc., which corporation owns all, or substantially all, of the stock of the Galveston Gas Service Company. I am not sure whether the Lone Star Gas Corporation owns stock of the Northwest Texas Gas Company or whether that stock is owned by the Stamford & Western Gas Company. I do know that the Stamford & Western Gas Company, unfortunately, has guaranteed principal and interest upon bonds of the Northwest Texas Gas Company.

Q. Meaning what?

A. I was merely trying to apprise you of the corporate interests. I wanted to be frank about it.

Q. With the exception of the gas company in Waxahachie and the gas company in Gainesville, is it correct or not that the Lone Star Gas Corporation owns the controlling voting stock of all the gas companies in Texas, with which it or the Lone Star Gas Company does business?

A. No, that is not true.

Q. How is it not?

A. If I understand your question correctly—
[fol. 55] Q. I think you do.

A. Texas Cities Gas Company, at El Paso, for example, buys gas from the El Paso Natural Gas Company—the pipe line company. The Galveston Gas Service Company and/or Texas Cities Gas Company buy gas from the Houston Pipe Line Company and not from the Lone Star Gas Company.

Q. Then you don't do any business with them if they don't buy gas from you, do you?

A. Mr. Stout, I don't comprehend your question; will you re-phrase it, please?

Q. The question I asked was whether or not the Lone Star Gas Corporation did not own a controlling voting interest in every company it did business with in Texas, or in every company the Lone Star Gas Company did business with in Texas, save and except the companies in Waxahachie and in Gainesville, Texas?

A. If you mean by controlling voting interest, the voting capital stock in excess of ninety-nine per cent, that would be true. It is my understanding that the control of a corporation is vested by law in its board of directors.

Q. Where does the Municipal Gas Company have its general office?

A. 301 South Harwood, Dallas.

Q. Where does the Stamford & Western Gas Company have its general office?

A. 1915 Wood Street, Dallas.

Q. Where does the Community Gas Company have its general office?

A. 1915 Wood Street, Dallas, Texas. Its principal office is 100 West Tenth Street, Wilmington, Delaware.

Q. Where does the Texas Cities Gas Company have its office?

[fol. 56] A. 1915 Wood Street.

Q. Where does the Dallas Gas Company have its office?

A. 800 Union Trust Building, Pittsburgh, Pennsylvania, and its principal office is at 100 West Tenth Street, Wilmington, Delaware.

Q. Where does the Lone Star Gas Corporation have its principal office?

A. Outside of Delaware, 800 Union Trust Building, Pittsburgh, Pennsylvania, and principal office at 100 West Tenth Street, Wilmington, Delaware.

Q. The Galveston Gas Service Company, where does it have its general office?

A. Its principal office is at 1915 Wood Street.

Q. The Galveston Gas Shares, Inc.?

A. It has its principal office, outside of Delaware, at 800 Union Trust Building, Pittsburgh, and its principal office in Delaware, I believe, is in Dover; I am not certain about that.

Q. Would you be so kind as to give us the directors of each of these corporations that you have just named?

A. I am unable to do that by memory.

Q. Would you get that data for us?

A. Well, I could get the data if time was given, but I cannot step outside of the courtroom and procure it.

Q. Would you prepare it?

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[fol. 57] A. As I recall, there are five directors of the Dallas corporation. I may be in error about one of these names I shall give you, but I think the list is correct: D. E. Mitchell, J. M. Simpson, T. B. Gregory, L. B. Denning, R. A. Crawford.

Q. Is D. E. Mitchell the same as Daniel Mitchell?

A. Yes, sir, one and the same.

Q. Could you give us the officers in each of the corporations named by you?

A. I would not attempt to do that by memory. I would be very happy to give you the information if I could remember it, but there are too many companies involved and I do not recall.

Q. You have all the books of the corporations doing business in Texas where—where do you keep them?

A. All the corporations enumerated doing business in Texas, their books are kept either at 1915 Wood Street or [fol. 58] 301 South Harwood Street in Dallas, but I refer solely to the general books of the several companies.

Q. Does 301 South Harwood Street join the building known as 1915 Wood Street?

A. It does.

Q. Right jam up together?

A. Even more than that; they are connected.

Q. All of it is connected, isn't it?

A. Well, I don't know that I understand your question.

Q. Do you have the officers of the Dallas Gas Corporation?

A. No, sir, I do not recall the officers of the Dallas Gas Corporation.

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Q. What amount, each year, does the Lone Star Gas Company pay to the Lone Star Gas Corporation for supervising fees, if any?

[fol. 59] A. It is a varying amount, determined by the application of one per cent to the gross receipts of the Lone Star Gas Company.

Q. All right. Approximately how much each year, in American money, does that amount to?

A. In round figures?

Q. Yes, sir, Mr. Griffith.

A. It approximates \$80,000.00 to \$100,000.00 a year.

Q. Just that?

A. Yes, sir; in other words, the gross receipts of the Lone Star Gas Company run from approximately eight to ten million dollars, and applying one per cent to that gives you eighty to one hundred thousand dollars.

Q. Is that a very nominal amount?

A. I think it is a nominal amount for the services rendered. That is about the only way I can answer your question.

Q. What service do they render?

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[fol. 60] A. Among other services, the Lone Star Gas Corporation has furnished money and financed the Lone Star Gas Company to the extent that the Lone Star Gas Company is indebted, either upon open account, short term notes or demand notes, to the Lone Star Gas Corporation in the approximate amount of \$18,000,000.00, as of this time, and as of the last several years—all periods. That money has been furnished by the Lone Star Gas Corporation to the Lone Star Gas Company at the rate of interest of six per cent per annum; notwithstanding the fact that over a period of the last several years the Lone Star Gas Corporation itself has been compelled to pay as high as ten per cent for money on current bank loans, and upon indebtedness funded for relatively short times. Now, the sum of \$80,000.00 to \$100,000.00 per annum, if my crude mathematics are correct, represents about one-half of one per cent upon the eighteen million [fol. 61] dollars; to-wit, one-half of one per cent of eighteen million dollars would be ninety thousand dollars per annum. I would say that is one of the most signal services rendered, but there are numerous others.

Q. What are the others?

A. The general purchasing office of the Lone Star Gas Corporation at Pittsburgh has purchased for the Lone Star Gas Company, free of all charge other than the application of the one per cent to the gross receipts of the Lone Star Gas Company, or the eighty to one hundred thousand dollars which I have mentioned, all of the steel pipe which has

entered into the pipe line system of the Lone Star Gas Company since that supervisory contract became effective about 1928, or 1927, possibly—I am not certain as to the date—through the consolidation of purchases in the hands of the general purchasing agent of the Lone Star Gas Corporation at Pittsburg. The Lone Star Gas Company has been able to secure prices for steel pipe and heavier materials much below the price which it would have been able to secure independently in the open market.

Q. Does it do all the purchasing for the Lone Star Gas Company?

A. Only pipe and some heavier materials. All other purchases are made by the Lone Star Gas Company purchasing agent, Mr. B. R. Newberry or his assistant.

Q. Pipe and pertinent equipment thereto is the biggest purchase made, isn't it?

A. Yes, sir, that is correct.

[fol. 62] Q. Now, Mr. Griffith, you say the Lone Star Gas Company owes to the Lone Star Gas Corporation, \$18,000,000.00?

A. Approximately \$18,000,000.00. As of this particular time it is something a little less than that.

Q. Did you give us the officers of the Lone Star Gas Corporation? I don't believe you did.

A. I gave the directors.

Q. Who are the officers?

A. The chairman of the board is Mr. George W. Crawford. The president of the corporation is L. B. Denning. The vice-presidents of the corporation are T. B. Gregory, R. A. Crawford, J. M. Simpson, myself, Karl F. Griffith, as vice-president and general counsel, D. L. Cobb is secretary and treasurer, David E. Mitchell is assistant secretary, and there are numerous, I might almost say countless, assistant secretaries and assistant treasurers and transit agents.

Q. They don't amount to much, do they, as far as power [fol. 63] and the rulership—they are no more than mist before the sun.

A. Each is supreme in the field where his duties operate.

Q. Are they clerical men?

A. No indeed.

Q. Give their names.

A. I don't recall them all. The assistant treasurer has charge of the books of the company. His authority is supreme in that direction.

Q. Who is he?

A. I believe the assistant treasurer is Mr. Fulton.

Q. And who else?

A. I do not recall all the assistant treasurers and assistant secretaries. There are several.

Q. But they operate under the—

A. They operate under the authority conferred by the board of directors and by the laws of the company.

Q. Now, Mr. Denning is of course connected with the Lone Star Gas Company?

A. Yes, sir, he is president of that company.

Q. You have a little connection with it, haven't you?

A. Yes, sir.

Q. And who are the other directors in the Lone Star Gas Company?

A. The directors of the Lone Star Gas Company are: D. L. Cobb, R. A. Crawford, F. L. Chase, R. E. Harding, sometimes referred to as Ellison Harding, Ben E. Keith and myself.

Q. Mr. Cobb lives in Dallas?

A. Yes, sir.

Q. Mr. Crawford, where?

[fols. 64-65] A. Dallas.

Q. Mr. Chase, where?

A. Dallas.

Q. Mr. Harding?

A. Fort Worth.

Q. Mr. Keith?

A. Fort Worth.

Q. You are a Dallas man, I believe?

A. Yes, sir.

[fol. 66] Q. Take the Community Gas Company, what service or fees does it pay to the Lone Star Gas Corporation annually, if any?

A. The Community Natural Gas Company, up until January 1st, 1934, and for a number of years, has paid to the Lone Star Gas Corporations for various services rendered,

the sum of fifty cents per domestic customer supplied by its local distributing plant. That fifty cents per customer is an annual payment and is the annual basis, and, I believe, was paid at the rate of four and one-third cents a month.

Q. What does it pay now?

A. Affective as of January 1st, 1934, it will pay that amount when, as and if it is able to do so.

Q. But it still holds its obligation?

A. Only when, and as and if it is able to pay.

Q. But still there is an understanding that "if"—why, it will pay?

A. Only in the event its earnings are sufficient to take care of its charges, plus interest, upon the money which it has borrowed.

Q. As I understand it, it has always paid it in the past?

A. Prior to January the 1st, 1934, and for a period of several years it has paid, it has paid it in the past.

[fol. 67] Q. In other words, fifty cents per head it gets from the customer, goes to the Lone Star Gas Corporation; is that right?

A. It pays fifty cents per customer.

Q. And the Community gets it from the folks?

A. The Community Natural Gas Company has no means of obtaining money except through contribution of stockholders or out of the revenues from the patrons which it serves.

Q. What service does the Lone Star Gas Corporation perform for it?

A. I would say, taking them up in order of their importance, that the Lone Star Gas Corporation has advanced or has financed the Community Natural Gas Company, either on open account, short time loans or demand loans, to the approximate extent or amount of \$8,000,000.00 or \$9,000,000.00, and that has been done over the past several years, and over the past several years the Community Natural Gas Company has owed to the Lone Star Gas Corporation, either on open account, short time notes or demand notes, the sum of \$8,000,000.00 or \$9,000,000.00.

Q. Are all loans not secured by deeds of trust?

A. They are not.

Q. The Lone Star Gas Corporation owns over ninety-nine per cent, does it not?

A. In excess of ninety-nine per cent of the capital common stock.

Q. In other words, it owns it?

A. It owns it; that is, by owning it, I mean in excess of ninety-nine per cent of the capital common stock.

[fol. 68] Q. Does it do the buying for this company, either directly or indirectly?

A. You mean the Lone Star Gas Corporation?

Q. Yes.

A. The Lone Star Gas Corporation acts for the Community Natural Gas Company as it does for the Lone Star Gas Company in connection with the purchase of pipe and possibly some of the other heavier material.

Q. Now, the Lone Star Gas Corporation is what is known, understood to be and recognized to be, as the holding company, isn't it?

A. I think your statement is substantially correct.

Q. Both in law and in fact?

A. It is in fact, anyhow.

Q. Now, Mr. Griffith, is it not true and is it not a fact that the same and substantial services that are rendered by the Lone Star Gas Corporation to the Lone Star Gas Company and the Community Natural Gas Company are rendered to the other corporations or companies affiliated with it in Texas?

A. Yes, the services are substantially the same kind and character as rendered to the other distributing companies.

* * * * *

[fol. 69] Q. Is the same true as to the amount of money owed by each so called distributing company as the other [fol. 70] facts you have testified to?

A. I am unable to recall, without detailed accounting sheets, as to whether or what amounts the other distributing companies are indebted to the Lone Star Gas Corporation.

Q. Do all of the distributing companies owe money to the Lone Star Gas Corporation?

A. I think that probably all of them do, with the possible exception of the Municipal Gas Company.

Q. Who does it owe money to?

A. It owes money to a great number of people.

Q. Any to the Lone Star Gas Company?

A. I think it does. I think it has been unable to pay its bills for gas delivered at the city gates.

Q. How is all of this money owed secured—if by any kind of obligation or agreement in writing?

A. All the money of which I have spoken is either on open account—and that would be relatively small amounts—or evidenced by short term or demand notes.

Q. And no other evidence of the debt?

A. I think that would be generally true. There might be some minor exception to that general statement.

Q. In addition to the services you have mentioned, furnished by the Lone Star Gas Corporation to each one of the companies named by you, does it not furnish, in addition to furnishing money, does it not furnish financial advice?

A. Oh, yes, sir.

Q. Does not it furnish legal advice?

A. Yes, sir, it does.

[fol. 71] Q. And when operating problems come up, do not they consult with the Lone Star Gas Corporation?

A. When a major operating problem of any consequence comes up, they do consult with the officers and directors of the Lone Star Gas Corporation, who have had long experience in the natural gas business; in fact, longer than any similar group of men in this country.

Q. Is the same true as to accounting?

A. I don't know that the underlying companies consult the chief officers and directors of the Lone Star Gas Corporation as to accounting, but the Lone Star Gas Corporation does furnish to the underlying companies the advice of experts in accounting matters.

Q. And they take that advice always, don't they?

A. They do, if they think it is good.

Q. If they did not, what would happen to them? Wouldn't off go their necks?

A. I would be unable to answer that question.

Q. Isn't the same true as to engineering?

A. In matters of engineering, either construction or operation, the Lone Star Gas Corporation, from time to time and as requested by the several operating companies, makes available to those companies the services of engineers who are skilled and experienced and largely recognized as authorities on natural gas matters.

Q. And isn't the same true as to the buying of supplies?

A. As I have previously stated, the purchasing work done by the general purchasing agent of the Lone Star Gas Corporation for the benefit of the several operating companies [fol. 72] is largely restricted to the purchase of steel pipe and possibly some of the other heavier materials. Each of

the operating companies has its own purchasing organization that does all other purchasing.

Q. How many of these companies designated by you owe money to the Lone Star Gas Company, if any beside the Municipal Gas Company?

A. I would be unable to say. A great many people owe money to the Lone Star Gas Company—trade men, merchandisers, and I do not recall any exact amounts, and I am unable to say as of any specific date any of the affiliated companies owed money to the Lone Star Gas Company.

Q. You said the Municipal Gas Company?

A. I said that was my best recollection; that several months ago the Municipal Gas Company owed the Lone Star Gas Company something over \$100,000.00 for gas purchased at the city gates.

Q. I believe yesterday, Mr. Griffith, you gave us the names of the directors of the Lone Star Gas Corporation and the Lone Star Gas Company?

A. That is correct.

Q. And then you gave us the names of the officers of each corporation, did you not?

A. In any event, the major officers.

Q. Now, will you explain to the court what directors each corporation has in common?

A. Three of the directors of the Lone Star Gas Corporation out of a total of seven of that corporation are directors as well of the Lone Star Gas Company, which company in [fol. 73] turn has a directorate consisting of seven members.

Q. Those three are who?

A. L. B. Denning, R. A. Crawford and myself, not constituting a majority.

Q. I had not asked you that. Who are the common officers between the two corporations?

A. I don't know what you mean by "common officers," but there are certain of the members of the board who are officers of Lone Star Gas Corporation and who at the same time are officers of the Lone Star Gas Company.

Q. Name them.

A. Mr. L. B. Denning is president of the Lone Star Gas Corporation and the Lone Star Gas Company. Mr. R. A. Crawford is one of the vice-presidents of the Lone Star Gas Corporation and also a vice-president of the Lone Star Gas Company. I happen to be vice-president and general counsel

of Lone Star Gas Corporation and hold a similar office and position with the Lone Star Gas Company.

Q. Who else?

A. Mr. D. L. Cobb, who is secretary and treasurer of the Lone Star Gas Corporation and also secretary and treasurer of the Lone Star Gas Company. Mr. Cobb is a director of the Lone Star Gas Company but not of the Lone Star Gas Corporation.

Q. What other officers are in common?

A. I think there are some minor officers.

Q. Who are they?

A. I believe Mr. T. J. Uhl is an assistant secretary of the Lone Star Gas Corporation as well as the Lone Star Gas Company.

[fol. 74] Q. Where does he stay?

A. Mr. Uhl spends most of his time at 301 South Harwood Street in the city of Dallas.

Q. He does not have much say so or power, has he?

A. He has all of the powers that are covered by the bylaws of the corporation, by resolutions of the board of directors and by law appointing him acting in the capacity wherein he has been appointed to serve.

Q. And when he is told he does it, doesn't he?

A. He endeavors faithfully to discharge the duties of his office.

Q. Who else?

A. There are possibly one or two others but I am uncertain as to them, and I will not attempt to testify from memory.

Q. Now, Mr. Griffith, as I understand from your testimony of yesterday, all the officers of one company or the other are located in the same place in Dallas, the same place in Pittsburgh or the same place in Wilmington, Delaware?

A. Do you mean offices or officers?

Q. Both.

A. That is hardly true, Mr. Stout.

Q. What is correct about it?

A. What I have heretofore testified to is correct as to addresses and names. Some of the officers and directors of the Lone Star Gas Corporation live in Pittsburgh, Pennsylvania.

Q. Do you have any offices except these four; is that correct?

A. Of the companies I have enumerated?

Q. Yes.

[fol. 75] A. If we refer to general offices, that is correct.

Q. Mr. Denning and you and Mr. Crawford are all in Dallas, Texas?

A. That is our voting address.

Q. Does Mr. Denning stay in Dallas, Texas?

A. I should say Mr. Denning is there about fifty per cent of his time.

Q. How about Mr. Crawford?

A. Mr. Crawford is gone a good deal.

Q. I notice the name Crawford appearing quite often in one of your corporations or the others; are they related to each other?

A. Mr. George W. Crawford is the uncle of Mr. R. A. Crawford. You may have seen the name of Mr. T. W. Crawford. Mr. T. W. Crawford died just about a year ago.

Q. Wherever the name "Crawford" appears, it is either father or son or brother?

A. No.

Q. Is it related?

A. As I have stated, there are only two Crawfords who are directors and officers of the Lone Star Gas Corporation, and Mr. George W. Crawford is the uncle of Mr. R. A. Crawford.

Q. Are you not related to some of the board, or directors, too?

A. I happen to be a brother-in-law of Mr. L. B. Denning.

Q. Is there any other relationship between the Dennings and the Crawfords and the Griffiths, or any of the other directors or officers of the Lone Star Gas Corporation or Lone Star Gas Company?

A. As far as I know, none whatever.

[fol. 76] Q. Is it not true that the gas business, insofar as your company or companies are concerned, in Texas, are practically run under one management in Dallas, Texas?

A. That is not true.

Q. You are general attorney for the Lone Star Gas Corporation, are you not?

A. Yes, sir.

Q. And you are general attorney for the Lone Star Gas Company?

A. Yes, sir.

Q. And you are general attorney for every gas company in Texas you do any business with?

A. That is not correct.

Q. You represent them, don't you; at every rate hearing any of them ever have had, haven't you been the leading lawyer?

A. I have participated in most of the cases involving the Community Natural Gas Company, the Stamford & Western Gas Company, the Municipal Gas Company, the Texas Cities Gas Company, the Lone Star Gas Corporation and the Lone Star Gas Company.

Q. Everything done on those cases was done under your direction?

A. I think I was responsible for that rate litigation as a lawyer usually is in charge of litigation or proceedings.

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[fol. 77] Q. In the event anything came up between the Lone Star Gas Company and the Lone Star Gas Corporation, which I am sure that things do do, you, Karl F. Griffith, would be the lawyer for each concern, being general counsel for both?

A. If there was any conflict of interests, I doubt—

Q. I am not talking about that—you would be the lawyer?

A. I am vice-president and general counsel of each company.

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Q. You have testified that as much as \$18,000,000.00 has been loaned to the Lone Star Gas Company by the Lone Star Gas Corporation—that that debt now existed; isn't that correct?

A. As much as that amount has been loaned and the indebtedness is now between \$17,000,000.00 and \$18,000,000.00.

Q. And there were similar amounts owing to the Lone Star Gas Corporation by every other affiliated company in Texas except the Municipal Gas Company, which owed the Lone Star Gas Company around \$100,000.00?

A. As of some months past, yes. I don't know the exact status now.

[fol. 78] Q. Do any of the affiliated companies doing business in Texas owe any sizable sum of money to any other company other than the Lone Star Gas Corporation or the Lone Star Gas Company?

A. Oh, yes, several of the companies owe sizable sums of money to banks and trust companies, and then several of

the companies are indebted to the extent of some millions of dollars, evidenced by bonds secured by deed of trust or mortgage indenture, and which bonds are in the hands of the public and widely scattered.

Q. What banks do they borrow money from?

A. They borrow from banks, usually, in the communities wherein they operate and the banks with which they ordinarily do business—in the last analysis, with the particular ones of those particular banks who name the lowest interest rates.

Q. Isn't most of the banking of your company under one bank in Pittsburgh?

A. No, that is not true. As I recall, the several companies, which I have enumerated, do business with approximately two hundred banks. I recall that figure because twenty of them were closed during the banking moratorium.

Q. Did you make those loans?

A. No, sir.

Q. Are you talking about current loans?

A. I assumed that is what you were talking about.

Q. Well, I was not. Did you represent anyone by proxy or power of attorney, ever?

A. Oh, I have acted as proxy or attorney in fact at various stockholders' meetings of various companies.

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[fol. 79] Q. Do not the officers or directors of the Lone Star Gas Company or the Lone Star Gas Corporation, either or both together, control the policies of the affiliate corporations in Texas with which the Lone Star Gas Company does business?

A. No, they do not attempt to control the policies, as is evidenced by the fact that the majority of the board of directors of each one of the operating companies which I have enumerated is not composed of men who are either directors of Lone Star Gas Company or Lone Star Gas Corporation.

Q. And that is your answer to that question?

A. That is my answer to the question.

Q. You are very careful to keep it that way on paper, are you not?

A. No, there is no particular care exercised about it; that is the fact.

Q. You and Mr. Denning and Mr. Crawford, all of you, are at Dallas, where the general offices are for all companies?

[fol. 80] A. Yes.

Q. And the other two Texas gentlemen who are directors in the Lone Star Gas Company are not in Dallas; is that correct?

A. No, there are seven directors of the Lone Star Gas Company in addition to Mr. L. B. Denning, Mr. R. A. Crawford and myself. Mr. F. L. Chase and Mr. D. L. Cobb, both residing in Dallas, are directors of the Lone Star Gas Company. Mr. R. E. Harding and Mr. Ben E. Keith of Fort Worth are also directors. That makes the total of seven on the board of directors of the Lone Star Gas Company.

Q. You spoke of a good deal of financing of various companies, and a good deal of bonded debt. Was not that all arranged and largely worked through one bank in Pittsburgh?

A. No, sir, it was not. However the chief bank of the Lone Star Gas Corporation has been the Union Trust Company of Pittsburgh.

Q. How about the bonded indebtednesses; were they not [fol. 81] worked out and handled through one bank in Pittsburgh?

A. No; the debenture bonds of the Lone Star Gas Corporation were placed through the Union Trust Company of Pittsburgh and the Guaranty Company, or the Guaranty Trust Company of New York City.

[fol. 82] OLIN CULBERSON, a witness produced by the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Fitzhugh:

Q. State your name.

A. Olin Culberson.

Q. Where do you live?

A. Austin, Texas.

Q. What is your occupation?

A. Director of the Gas Utilities Division of the Railroad Commission of Texas.

Q. How long have you been connected with the Railroad Commission?

A. Since September, 1932.

Q. Are you familiar with the documents that comprise the records of the Gas Utilities Division of the Railroad Commission of Texas?

A. Yes.

Q. What reports do the gas utilities of Texas—and particularly I refer to the Lone Star Gas Company and its affiliated companies—file with your division?

[fol. 83] A. They file what is termed an annual report, showing the annual business, the capital set up, the stock ownership, the officers, directorates and general resume of the company's business, and then they file what we term a G. U. 2 report which is their gross receipts taxes that is paid into our division.

Q. Do you have with you the annual report submitted by the Lone Star Gas Company for the year just past?

A. Yes.

Q. Do you have the reports for any prior years?

A. I don't have the annual reports for any years except 1933. I have the quarterly reports covering the gross receipts back to 1931.

Q. Will you refer to the last annual report you got from the Lone Star Gas Company.

A. Yes.

Q. Is this report sworn to by an officer of the company?

A. Yes, sir.

Q. Who is the person swearing to the report?

A. Mr. F. L. Chase, Vice-President, and Mr. L. T. Dyer, Comptroller.

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[fol. 84] Q. Refer yourself to the study you have made as taken from the annual reports of the Lone Star Gas Company and its affiliated companies on file with the Railroad Commission—

A. All right.

Q. Do you hold in your hand a diagram which shows the interlocking officers and directors in the Lone Star Gas Cor-

poration, the Lone Star Gas Company, and its affiliated companies?

A. Yes.

Mr. Fitzhugh: We offer it in evidence.

(Which said "Interlocking Directorate in Lone Star Gas Corporation System" was admitted in evidence as "State's Exhibit No. 2.")

Mr. Fitzhugh:

Q. Have you compiled another chart which shows the officers which are common to the Lone Star Gas Company and its affiliated companies?

[fol. 85] A. I have not with reference to officers. I have, however, compiled a list of officers and directors in the various holding companies of those gentlemen who are connected with the Lone Star Gas Corporation, the Lone Star Gas Company, and its underlying subsidiaries. This, however, is taken from the recent report that was made by Mr. Splawn, who is now a member of the Interstate Commerce Commission for Chairman Rayburn of the Interstate and Foreign Commerce Committee of the House of Representatives in Washington, D. C. I did not know that it was wanted as a list of the officers and directors of each of the underlying subsidiaries.

Q. Have you made an independent check of the compilation as made by the Splawn report?

A. I have. I have checked it with the reports that have been filed by each of these respective companies making reports to us and on this compilation taken from the report of the Interstate and Foreign Commerce Committee, I have indicated by a red check or red dot those companies that do make reports to us and have verified the fact as to the position held as an official and as a director, if any, in those companies.

Mr. Fitzhugh: We offer it in evidence.

(Which said "Chart" was admitted in evidence as "State's Exhibit No. 3." See Index for page reference.)

[fol. 86] Mr. Fitzhugh:

Q. What reports does the Railroad Commission get that show the amount of gas the Lone Star Gas Company produces in Texas?

A. That is indicated on what is known as Form G. U. 2, which is a gross receipts tax statement for gas utilities.

Q. When are those statements submitted by the companies?

A. Quarterly.

[fol. 87] Q. Do you have photostats prepared of the quarterly gross receipts statements for the period of time extending from January 28, 1932, up to and including the statement submitted by the company dated January 30, 1934?

A. Yes sir.

Q. And those photostats are copies of the originals filed by the company with the Railroad Commission?

A. Yes.

Mr. Fitzhugh: We offer them in evidence.

(Which said "Photostat Copies of Reports, Form G. U. 2" were admitted in evidence as "State's Exhibit No. 4." See Index for page reference.)

Mr. Fitzhugh:

Q. Now, refer to State's Exhibit 4 and locate on the exhibit the statement made by the company as to the amount of gas delivered in Texas on each statement and read the same.

A. For the quarter ending December 31, 1931, dated January 28, 1932, it shows a total of 8,049,734 M. c. f.

Q. The meaning of that is one thousand cubic feet?

A. Yes (reading from State's Exhibit 4). "90% of the amount of gas delivered in Texas for the past quarter was from gas produced and purchased in Texas; 10% was from the State of Oklahoma. The Company, therefore, bases this payment on 90% of the receipts as indicated above." This report was dated January 28, 1932, sworn to by D. L. Cobb, Treasurer of the Company, and states "Subscribed and sworn to before me this the 29th day of January, 1932. Chas. G. Hess, Jr., Notary Public, Dallas County, Texas," with seal.

[fol. 88] Q. Now refer to the next statement and give the same data.

A. There was a grand total of 10,094,678 MCs, with this note: "88% of the amount of gas delivered in Texas for the

past quarter was from gas produced and purchased in Texas; 12% was from the State of Oklahoma. The Company, therefore, bases this payment on 88% of the receipts as indicated above." That was for the quarter ending March 31, 1932.

Q. Refer to the next statement.

A. For the quarter ending June 30, 1932, there was 5,380,485 MCs sold in Texas, with this note at the bottom: "97% of the amount of gas delivered in Texas for the past quarter was from gas produced and purchased in Texas, 3% was from the State of Oklahoma. The Company, therefore, bases this payment on 97% of the receipts as indicated above."

Q. Refer to the next statement.

A. For the quarter ending September 30, 1932, there was a total of 4,646,616 MCs with this note: "99% of the amount of gas delivered in Texas for the past quarter was from gas produced and purchased in Texas, 1% was from the State of Oklahoma. The Company, therefore, bases this payment on 99% of the receipts as indicated above."

Q. Refer to the next statement.

A. The next one is for the quarter ending December 31, 1932, a grand total of 10,014,920 MCs, with this note: "93% [fol. 89] of the amount of gas delivered in Texas for the past quarter was from gas produced and purchased in Texas, 7% was from the State of Oklahoma. The Company, therefore, bases this payment on 93% of the receipts as indicated above."

Q. Refer to the next statement.

A. The next one is for the quarter ending March 31, 1933, and shows a total of 9,563,755 MCs sold in Texas, with this note: "93% of the amount of gas delivered in Texas for the past quarter was from gas produced and purchased in Texas, 7% was from the State of Oklahoma. The Company, therefore, bases this payment on 93% of the receipts as indicated above."

Q. Refer to the next statement.

A. For the quarter ending June 30, 1933, there was 5,625,748 MCs sold in Texas, with this note: "98% of the amount of gas delivered in Texas for the past quarter was from gas produced and purchased in Texas, 2% was from the State of Oklahoma. The Company, therefore, bases this payment on 98% of the receipts as indicated above."

Q. Refer to the next statement.

A. For the quarter ending September 30, 1933, it shows a grand total of 5,457,154 MCs sold in Texas, with this note: "98% of the amount of gas delivered in Texas for the past quarter was from gas produced and purchased in Texas, 2% was from the State of Oklahoma. The Company, therefore, bases this payment on 98% of the receipts as indicated above."

[fol. 90] Q. Refer to the next statement.

A. The next is for the quarter ending December 31, 1933, with a grand total of 7,455,767 MCs sold in Texas, with this note: "95% of the amount of gas delivered in Texas for the past quarter was from gas produced and purchased in Texas, 5% was from the State of Oklahoma. The Company, therefore, bases this payment on 95% of the receipts as indicated above."

Q. Refer to the next statement.

A. The next is for the quarter ending March 31, 1934, which shows a total of 10,338,034 MCs sold in Texas, with this note: "93% of the amount of gas delivered in Texas for the past quarter was from gas produced and purchased in Texas, 7% was from the State of Oklahoma. The Company, therefore, bases this payment on 93% of the receipts as indicated above." And each of these respective reports bears the same affidavit, signed by Mr. D. L. Cobb.

Q. The Railroad Commission has never made an independent check to find the correctness of those figures, has it?

A. Nothing further than to verify the correctness of the total as shown on the report.

Q. But has accepted as true the figures given the Commission by the Company for payment of the gross receipts tax?

A. Yes.

Q. The most shown on any of these statements for any one period for gas coming from Oklahoma is twelve per cent, isn't it?

* * * * *

[fol. 91] Mr. Fitzhugh:

Q. The most for any one period was twelve per cent?

A. Yes.

Q. And the average as shown by these items is considerably below five per cent, is not it?

A. Yes.

Mr. Shannon: Do you mean the weighted average or the arithmetical average?

A. I made a calculation for 1931, 1932 and 1933 and the weighted average on that was four and one-half. I have not got a weighted average on 1932, 1933 and part of 1934.

Mr. Fitzhugh:

Q. The weighted average was below five per cent?

A. I have not made a calculation on the weighted average for 1932, 1933 and 1934. I would say it was less than five but I would not want to swear to it.

Q. Now, are you generally familiar with reports that were submitted by the Company prior to this time?

A. Yes sir.

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[fol. 92] Mr. Fitzhugh:

Q. Have you from an investigation that you have made of the tax statements made any sort of a study or diagram in written form to show the weighted average of gas produced and purchased in Oklahoma and brought into the State of Texas for consumption?

A. Yes sir.

Q. This data is all taken from the sworn reports submitted by the Company to the Railroad Commission?

A. Yes.

Mr. Griffith: Is it based upon the gross receipts reports which you have just introduced in evidence?

A. Yes.

Mr. Griffith: And no other?

A. That is what I took the information from.

Mr. Fitzhugh:

Q. What is the per cent shown on this chart for the per cent of gas produced and purchased in Texas and the same for the per cent produced and purchased in Oklahoma?

A. For the year 1931 it shows ninety per cent produced and purchased in Texas; ten per cent in Oklahoma.

Q. 1932?

A. Ninety-three per cent produced and purchased in Texas, seven per cent produced and purchased in Oklahoma.

[fol. 93] 1933 ninety-five and one-half per cent produced and

purchased in Texas, four and one-half per cent produced and purchased in Oklahoma. And for the first quarter of 1934 ninety-three per cent produced and purchased in Texas and seven per cent produced and purchased in Oklahoma.

Mr. Fitzhugh: We offer this in evidence.

(Which said "Compilation" was admitted in evidence as "State's Exhibit No. 5," See Index for page reference.)

Mr. Fitzhugh:

Q. Now, the only two distributing companies served by the Lone Star Gas Company pipe line that are not affiliated with the Lone Star Gas Company are the Gainesville Gas & Electric Company and the Waxahachie Gas Company, isn't that true?

A. According to my investigation that is the only two.

Mr. Griffith: The question is confined to Texas, isn't it?

Mr. Fitzhugh: Yes. What do the records of the Commission show has been the amount of gas delivered the Gainesville Gas & Electric Company for the year 1933?

* * * * *

[fol. 94] Mr. Fitzhugh: Have you prepared a tabulation from the reports that will show the per centages of gas delivered to those companies as compared with the total deliveries?

A. Yes.

Q. What do your tabulations show?

A. For the year 1931 there was delivered to the Gainesville plant .85 of one per cent and to the Waxahachie plant .29 of one per cent of the total gas delivered in Texas. In 1932 to the Gainesville Plant there was .77 of one per cent and to the Waxahachie plant .28 of one per cent. 1933 there was .80 of one per cent to Gainesville and to Waxahachie .31 of one per cent of the total amount of gas delivered in Texas, according to the G. U. 2 reports.

Q. Now, all of the fundamental data you used in making this compilation came from a sworn report made by the Company to the Railroad Commission, didn't it?

A. Yes.

Mr. Fitzhugh: We offer this compilation in evidence.

(Which said "Compilation" -as admitted in evidence as "State's Exhibit No. 6." See Index for page reference.)

Cross examination.

By Mr. Griffith:

Q. You have identified several gross receipts tax statement returns of the Lone Star Gas Company to the Rail-[fol. 95] road Commission of Texas and to the State Treasurer, and which statements have been introduced in evidence, or rather photostat copies have been introduced in evidence?

A. Yes.

Q. And from those several gross receipts tax statements you have made certain compilations reflecting the total volume of gas delivered by the Lone Star Gas Company in Texas and the volume of gas produced and purchased in Texas and the per centage of the total produced and purchased in Texas and the per centage of the total produced and purchased in Oklahoma?

A. Yes.

Q. Examine Defendant's Exhibit No. 4 and particularly the map which appears at the close of that exhibit. Do you identify this map as being a true and correct map of the Lone Star Gas Company pipe line system?

A. Substantially, it is, yes.

Q. As far as you can now identify it, it seems to be correct?

A. Yes, it seems to be a copy of a map which we have in our files.

Q. A copy which has been furnished to the Commission?

A. Yes sir.

Q. Do you know the location of the Shamrock Gas Field in Wheeler County, Texas?

A. Approximately, yes.

[fol. 96] Q. Do you know how gas from the Wheeler County gas field or the Shamrock Gas field is transported by the Lone Star Gas Company to the various points of delivery at the city gates in the State of Texas?

A. Yes. It originates in Wheeler County, Texas, and is brought down in an eighteen inch line, down through the western edge of Oklahoma for about three miles and then into Texas and where it comes down it follows the general line of the Fort Worth & Denver City Railroad down to Fort Worth and Dallas and up to Gainesville.

Q. Now, all of the gross receipts tax statements which you have identified and all of the compilations which you have made in respect of gas produced and purchased in Oklahoma and in Texas have nothing whatever to do with the transportation of the gas by the Lone Star Gas Company from the Shamrock field in a southeasterly direction through the State of Oklahoma and back into the State of Texas?

Mr. Fitzhugh: We object. The statements speak for themselves.

A. I don't just understand. The report as made covers the volume of gas sold and the amount of money received for it at the various city gates.

Mr. Griffith:

Q. Now, the gas produced and purchased by the Company in the Shamrock field of Wheeler County Texas and which gas subsequently moves through the eighteen inch line into the State of Oklahoma and back into the State of Texas is rendered in the gross receipts tax statements which you have identified and in the compilation of gas produced and purchased in Oklahoma and Texas as gas which is produced and [fol. 97] purchased in the State of Texas or Oklahoma?

A. That is the conclusion I draw. We were guided by the statements made on the reports themselves and calculated them according to the statements as shown there, and I am sure they included the gas produced in Wheeler County.

Q. In other words, as far as you know, the gas which was produced and/or purchased by the defendant Lone Star Gas Company in the Shamrock field of Wheeler County, Texas, was reported upon these gross receipts tax statements which you have identified and put in evidence as a part of the gas which was produced and/or purchased by the defendant Company in the State of Texas?

Mr. Fitzhugh: We object to that as calling for a conclusion and the reports speak for themselves.

The Court: Objection -verruled.

Mr. Fitzhugh: We except.

A. I took my calculations off of the reports and took them for exactly what they said they were, and that was that the various per centages shown were produced and purchased in Texas and in Oklahoma respectively.

[fol. 98] S. W. FREESE, a witness produced by the Plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Fitzhugh:

Q. What is your name?

A. S. W. Freese.

Q. Where do you live?

A. Fort Worth.

Q. What is your business?

A. Consulting Engineer.

Q. Are you connected with any firm?

A. Hawley, Freese and Nichols.

Q. Are you a graduate of any college?

A. Yes, the Massachusetts Institute of Technology.

Q. Did you take a degree there?

A. Yes.

Q. What degree?

A. B. S.

Q. How long have you been practicing your profession of engineering?

A. Since 1921.

[fol. 99] Q. Your firm was employed, was it not, Mr. Freese, by the Railroad Commission of Texas to investigate the properties of the Lone Star Gas Company and to render an appraisal?

A. Yes. That was in the latter part of 1931 and we worked more or less continuously upon that matter ever since.

Q. Has your investigation not only been of the properties of the company but of the business as shown by its accounting records?

A. Yes, we retained the firm of J. A. Phillips & Company of Houston to make an investigation of the accounting records of the company for us.

Q. Is Mr. Phillips a Certified Public Accountant?

A. Yes.

Q. And has he been associated with you in this work continuously since you undertook it for the Commission?

A. Yes.

Q. Have you made an investigation to find the amount of gas reserves that the company has in the state of Texas as compared with its gas reserves in other states?

A. Yes.

Mr. Fitzhugh:

Q. Have you made it a part of your business the last few years in practice and in the years prior thereto to make a study of gas wells and the production of gas wells and [fol. 100] transportation and so forth, such as the Lone Star Gas Company is engaged in?

A. I have made a careful study of the records of the Lone Star Gas Company which show and reflect the amount of gas reserves in Texas and in Oklahoma.

Q. Do you know the gas fields from which the Lone Star Gas Company gets its gas?

A. Yes.

Q. Have you made a study of the particular wells in each field?

A. I have made a study of the gas reserves in those fields as shown by the records of the company.

Q. Are you acquainted with the lines that connect with the wells in the various fields and that connect with the main lines of the company?

A. Yes, sir.

Q. Are you familiar with the records of the company, the maps and other data in the general office at Dallas that show the undeveloped reserves of the company?

A. We have had those records examined, and I have checked the data submitted by the company and shown by the company's records as to those matters.

Q. What do you mean by the term "gas reserves?"

A. The amount of gas which the records of the company show as being under the ground both in the developed leaseholds and the undeveloped leaseholds of the company. [fol. 101] Q. Have you made a study to find the amount of such gas reserves in Texas as compared with the State of Oklahoma?

A. Yes.

Q. Will you give the Court the benefit of your findings?

Mr. Griffith: We object because it is immaterial and irrelevant and because the witness is not qualified.

The Court: He says he gets his information from the books and the books speak for themselves. If he can tes-

tify from his independent knowledge he could testify to that, but that is a question as to whether it is reserved or not.

Mr. Stout: May we prove it up for the bill of exceptions?

The Court: Yes.

Mr. Shannon: May it be understood that our objection goes to all the line of testimony which has to do with a compilation of the reserves in Texas and the reserves in Oklahoma and the sources of gas?

Mr. Fitzhugh: Yes.

Q. Go ahead.

A. As of December 31, 1931 I made a check of all of the leaseholds of the company. That was an independent check of their records, all of this data as to the thickness of the sands and the amount of gas reserves and such as that can only come from the records of the Company.

The Court: You have no independent knowledge of it?

A. No.

[fol. 102] The Court: You just know that from their reports?

A. Yes. The result as of these different dates from which I judge the amount of gas in these leaseholds. On January 1, 1932 the Texas reserves were 415,728,939,000 cubic feet. The Oklahoma reserves were 1,246,898,000 cubic feet. At that time the ratio was about one-fourth of one per cent in Oklahoma as compared to the amount in Texas. Since that time the company has purchased certain reserves in Oklahoma and certain reserves in Texas, and I know that as of this date the amount of reserves in Texas are more than ninety-nine per cent of the total gas reserve.

Mr. Fitzhugh: In those figures are you considering only the company owned reserves?

A. Yes.

Q. What is the price paid by the company for gas purchased in Texas.

Mr. Shannon: Have you concluded the testimony on the reserves? If so, we renew our objection for the reason that that testimony is immaterial and irrelevant and ask that it be stricken.

The Court: He is only proving up his bill now.

Mr. Shannon: All right.

Mr. Fitzhugh: What is the price paid by the company for gas purchased in Texas?

A. For the year 1933 the gas purchased in Texas cost .035279, or approximately three cents, per thousand cubic feet.

[fol. 103] Q. Is that an average figure for all Texas?

A. Yes, for the year 1933.

Q. What is the comparable figure for the State of Oklahoma?

A. The gas purchased in Oklahoma cost \$061002, or approximately six cents.

Q. The gas purchased by the company in Oklahoma cost it per thousand cubic feet a little less than twice as much as the gas purchased in Texas?

A. Yes, a ratio of approximately six cents to three and one half cent.

Q. Referring back to the testimony as to the gas reserves, is it your opinion as an expert from what you know, from what you have investigated and from a careful check of the company's records that the figures and statements given you in connection with the gas reserves are true and correct?

A. Yes.

Q. Is there enough gas in the gas reserves of the Company in Texas and controlled by it through gas purchase contracts to supply all of the Texas consumption, the needs of Texas consumers, with Texas gas?

A. Yes.

Mr. Griffith: We object to that as immaterial and irrelevant, and the witness having answered before we could object, we now move to strike it out.

[fol. 104] The Court: Sustained.

Mr. Stout: May we prove it for our bill of exception?

The Court: Yes. I don't think it is admissible. You may have your bill on it if you want that.

Mr. Fitzhugh: Are you ruling out all of the testimony we seek to offer showing the subterfuge of the company in running its line through a corner of Oklahoma?

The Court: That is not the question now.

Mr. Stout: May we have a full bill on the questions up to this time on that matter?

The Court: Yes.

Mr. Stout: That is all we care to put in on the bill of exception.

The Court: All right.

Mr. Fitzhugh: I would like to ask the same question, and if the Court overrules it, for the purpose of the record.

The Court: You have got that in the record. It has been asked and objected to. You have it in the record for the bill.

Mr. Fitzhugh:

Q. Have you made a study of an exhibit—Defendant's Exhibit No. 4—submitted by Mr. Smith?

A. Yes.

Q. Refer to the page for the year 1933?

— All right.

[fol. 105] Q. Have you made a check of the amounts of gas in thousands of cubic feet shown by the various fields from Oklahoma to have been produced and purchased by the company during the year 1933?

A. Yes, I have made a check of the total amount of gas produced and purchased in Oklahoma. My figures show 1,690,342 M. C. feet which checks exactly with the condition of the totals shown by the various fields for the year 1933 in this exhibit submitted by Mr. Smith.

Q. Your total includes all of the gas as shown on Mr. Smith's page for 1933 with exception of the Shamrock field?

A. Yes.

Q. What is that total?

A. 1,690,343 M. cubic feet.

Q. Does that total represent the amount of gas produced and purchased in the State of Oklahoma that actually came across the border into Texas?

A. No, it does not.

Q. What are the correct figures?

A. That was produced in Oklahoma during the year 1933?

Mr. Griffith: Are you making a bill of exceptions now?

Mr. Stont: No.

Mr. Griffith: Where do you get the information from which you are now testifying?

A. From the books of the company.

Mr. Griffith: When were you present at Dallas and examined the books of the company for the year 1933?

A. I sent a man over there to get these figures, I think week before last.

Mr. Griffith: It is hearsay on your part?

A. No it is not hearsay.

Q. You did not personally see the books?

A. No. I did not personally see the books.

Mr. Griffith: We object to it as hearsay.

The Court: Were you present when that work was done?

A. No, but I checked over the figures with him, and I know the number of people in these various towns, and I do know that that is a reasonable figure.

Mr. Fitzhugh: Your figure checks exactly with the figures given by Mr. Smith, does not it?

A. Yes, as to the amount of gas produced in these fields.

Mr. Griffith: We will withdraw the objection.

A. The figures show that there was produced for the year 1933 in Oklahoma 1,690,342 M. cubic feet.

Mr. Fitzhugh:

Q. Those are Mr. Smith's figures?

A. Yes, and also the figures prepared for us by our auditors.

Q. And you state those are not the correct ones for the amount of gas that is purchased and produced in Oklahoma that actually passes the border into Texas?

[fol. 107] A. No. A large amount of this gas was used in Oklahoma. The total usage in Oklahoma during 1933 was 1,135,394 M. cubic feet, a large part of which was from these fields and never reached the state of Texas.

Q. Now, deducting that amount that was consumed in Oklahoma from the total amount that was produced and purchased in Oklahoma, what figure do you get?

A. The net amount of gas reaching Texas from the Oklahoma fields. A small amount of Texas gas went back up into Oklahoma as part of this 1,135,394 but the net amount of gas produced and purchased in Oklahoma which reached Texas was 556,947 M. cubic feet or approximately two per cent of the amount of gas sold in Texas in 1933.

Q. What is the relative difference in the cost of gasoline delivered as between gas coming from Oklahoma sources and that coming from Texas sources?

Mr. Shannon: We object to that for the reasons stated—as being immaterial and irrelevant and not having any bearing on the question of whether or not the company is now

engaged in transporting and selling gas in interstate commerce.

The Court: Sustained.

Mr. Stout: We except.

Mr. Fitzhugh:

Q. What is the relative difference in the cost of gas delivered in Texas as gas coming from Oklahoma sources and gas coming from Texas sources?

[fol. 108] Mr. Shannon: We object to that for the reasons stated.

The Court: Sustained.

Mr. Fitzhugh: I mean the gas delivered in Texas.

The Court: I understand.

Mr. Stout: Note our exception. May we ask just one question on it for the record?

The Court: Yes.

Mr. Stout:

Q. Can you give the comparative cost between gas that comes from Oklahoma and that is delivered from Oklahoma to the service of users within the State of Texas, as to the gas that comes from within the State of Texas and that is delivered and served by the Lone Star Gas Company to the users of gas within this state?

Mr. Shannon: Is that for the purpose of the bill?

Mr. Stout: If the Court so construes it. Can you do that?

A. Yes. Not exactly. The exact proportion of gas coming into each of these lines can be determined approximately. So far as the cost of producing the gas and the compressor station costs in Oklahoma and Texas, and the transmission expense in Oklahoma and Texas, those costs have been subdivided and have been furnished me.

Q. Does it cost more money, and is the expense greater, on gas transmitted from Oklahoma to and within the State of Texas and delivered within the state—

[fol. 109] Mr. Griffith: Is this part of your bill of exceptions?

Mr. Stout: If the Court so construes it.

Mr. Griffith: We object to it as immaterial and irrelevant and the witness is not qualified.

The Court: Sustained.

Mr. Stout: We except.

A. Yes, the Oklahoma gas cost during 1933 approximately two and one half times that of the Texas gas.

Mr. Stout:

Q. Does that condition still obtain at this time?

A. Yes. There is nothing that could be changed greatly since these figures were prepared in that connection.

Q. In other words, the cost is far greater to the Lone Star Gas Company to get gas from Oklahoma to its distributing companies than it would be for the gas produced within the State of Texas?

Mr. Griffith: Is this still part of your bill?

Mr. Stout: If the Court says "yes", yes sir.

A. Yes.

Mr. Stout:

Q. And you have previously testified that the supply of gas in Texas is more than sufficient to serve the needs of Texas and/or the needs of the Lone Star Gas Company?

A. Yes.

Q. And I believe you testified that the gas reserves and the amount of gas developed in Texas as compared to the gas reserves and amount of gas developed in Oklahoma bears a ratio in Texas as to Oklahoma of over four hundred to less than one half of one per cent?

[fol. 110] A. I testified that as of December 31, 1931 the Texas reserves were approximately four hundred billion as compared with one billion in Oklahoma, and that at this time not more than one per cent of the reserves are in Oklahoma.

Q. In other words, the ratio is approximately four hundred in Texas to one half of one per cent in Oklahoma?

A. As four hundred is to one. It would be one fourth of one per cent as of December 31, 1931.

Q. That is, one fourth of one per cent of gas reserves, gas developed in Oklahoma as compared to that in Texas?

A. As of December 31, 1931, and that will not have changed substantially since that time.

Q. On up to now?

A. It could not have changed to more than one per cent at this time.

Mr. Stout: As I understand it, the questions and answers of the witness are all stricken out; that we may have a full bill of exceptions to the court's ruling thereon?

The Court: Yes.

Mr. Shannon: So that the record may be clear they began their bill at the time they began to inquire into the question of gas reserves and costs of gas?

Mr. Stout: And the extent of serving gas, and the Court [fol. 111] sustained all objections made to the cost of gas, the expense of gas and to gas reserves, and the development of gas and to any comparison of the same between Texas and Oklahoma.

Mr. Stout:

Q. Are you familiar or not with what is called line extension of the Lone Star Gas Company extending from the Shamrock field in Wheeler County, Texas, through a little narrow part of Oklahoma on down into Texas?

A. Yes.

Q. Have you made any study and any investigation as to whether or not it would have been cheaper to have built that line within Texas instead of having a part of it in Oklahoma, as was done?

Mr. Griffith: We object to that as immaterial and irrelevant and not germane to the question of whether this company is in fact engaged in interstate commerce, and this witness is not qualified in respect to costs.

The Court: Sustained.

Mr. Stout: Tell what qualifications you have, if any, to know why it would have been cheaper to have built the line wholly within the State of Texas instead of as was done?

A. Well, during the past ten years I have had direct charge of some fifteen or twenty million dollars worth of construction work. During that time I have investigated costs of properties running up over one hundred million dollars. I have been over the territory covered by this line and I have had occasion to study in detail the costs of such [fol. 112] lines, particularly as reflected by the books of the Lone Star Gas Company.

Q. Are you a civil engineer?

A. Yes.

Q. You stated you were a graduate of the Massachusetts Institute of Technology?

A. Yes.

Q. You have taken a post graduate course along the same lines in Cambridge, England?

A. Yes, I have taken a post graduate course at Cambridge, England.

Q. And you have done work of this kind over a great deal of the territory covered by the Lone Star Gas Corporation since that time?

A. Yes.

Q. How long have you been working along the line of work?

A. Ever since this case began.

Q. You are a member of the firm of Hawley, Freese & Nichols?

A. Yes.

Q. Tell the Court, if you know, why it was more expensive to build that line extension as it was built than it would have been to have built it wholly within the State of Texas in a shorter and more direct route?

Mr. Griffith: We object to that as immaterial and irrelevant and because the witness is not qualified.

The Court: I think he has shown himself qualified to testify.

[fol. 113] Mr. Griffith: We urge the objection that it is immaterial and irrelevant and has nothing to do with the fact whether the Lone Star Gas Company is engaged in interstate commerce, and particularly in regard to line gas.

The Court: Are they selling gas on that line in Oklahoma?

A. Yes.

The Court: At what towns?

A. Hollis, Frederick, Tipton, Manitou, Mountain Park—

The Court: I think it is immaterial and irrelevant.

Mr. Stout: We except.

Mr. Stout:

Q. To get to the point where the line went to in Texas could it have been built in a much more direct manner?

Mr. Griffith: We make the same objection.

The Court: The objection is sustained.

Mr. Stout: We except.

Mr. Stout:

Q. State whether or not that line is actually built in Oklahoma through a rough, rocky territory beneath the surface of the soil?

Mr. Griffith: Same objection.

The Court: Sustained.

Mr. Stout: We except.

Mr. Stout: Do you know whether or not if the line station had been built in Texas instead of the route as was built in Oklahoma, whether or not it would have run through a more populous territory and would have been contiguous [fol. 114] to a greater population than it was contiguous to in Oklahoma as it was built?

Mr. Griffith: Same objection.

The Court: Sustained.

Mr. Stout: We except. For the purpose of incorporating it in our bill of exception, may we not let the witness briefly testify just to the fact that he would testify to relative to this line?

The Court: Yes.

Mr. Stout: Would it have been cheaper to have built this line within Texas instead of in Oklahoma, as it was built?

— A. I can safely say that it could have been moved over into Texas and built just as cheaply as it was built through Oklahoma.

Q. Now, as to the soil. Would there have been any difference in the condition of the soil in Texas as compared to where it was actually laid in Oklahoma?

A. If the line had been built in a practically straight line there would have been less rock excavation than there was across the corner of Oklahoma.

Q. If it had been built in practically a straight line, would it have been within the State of Texas?

A. If it had been built in an exactly straight line to the point where it crossed into Texas there would have been a small tip right at the corner of two or three miles.

[fol. 115] Q. Could it have been built wholly within the State of Texas in a much shorter distance than it was as it was built and through a better soil than it is as it is actually laid?

A. It could have been built through Texas with a shorter length than as it was actually built.

Q. And by taking such route would the rough rocky soil have not been there?

A. There would have been some less rock excavation in Texas than in Oklahoma.

Q. Did the rough rocky soil make the construction cost greater?

A. Yes.

Q. What other reasons, if any, do you have for knowing that it cost more money to build it in Oklahoma than if it had been built in Texas?

Mr. Griffith: Is this still your bill of exception?

Mr. Stout: Yes.

Mr. Griffith: He said it could have been built as cheaply in Texas?

Mr. Stout: What is your answer?

A. I think my answers to your previous questions are substantially all I can say in that respect.

Q. Would a more populous territory be served had the line been built in Texas?

A. The line could have been built through Wellington. [fol. 116] Q. Is Wellington on a direct route?

A. Yes, with a population of 1968 in 1930 instead of by Hollis with a population of 1699 in 1930, Hollis being the only town served in Oklahoma by that particular line station as it cuts across the corner of Oklahoma.

Q. Is there any sound practical reason why the line should have been built as it was that you know of?

A. In preference to a line wholly in Texas, no.

Q. The first city of any size this line strikes in Texas is what place?

A. Quanah. I don't recall whether that is served by the Lone Star Gas Company or not.

Q. From the Shamrock Field to Quanah, Texas, how much distance would have been saved had the line been built in a direct manner instead of being built as it was built?

A. Approximately, I should say, judging from this map, five miles.

Q. How much would have been saved?

A. Five miles.

Q. Had it been built direct would not more distance than that have been saved?

A. No, I think that is approximately correct.

Q. What is the total population of the towns served on that line in Oklahoma where the line is actually built?

A. Hollis is the only one. It has a population of 1699.

[fol. 117] Q. Were the transportation facilities by the public highways and roads better at the time the line was built within the State of Texas than they were within the State of Oklahoma when it was built?

A. The road and highway connections would have been somewhat better in Texas than in Oklahoma at the time the line was built.

Q. Is there an earthen soil in Texas as compared to the rocky soil in Texas where the line was actually built?

A. As you tend to go west from the line as it is, the soil becomes more earthy and less rocky.

Q. And as you go east it becomes rough and rocky?

A. No, I don't know that I can say that it would. As you get on over east you get into an earthen soil until you get into the bed rock.

Q. But where the line is built it traverses a rocky soil in part at least?

A. Yes.

Q. And that condition would not have existed had it been built in the State of Texas?

A. Not to such an extent.

Q. As in Oklahoma where it was built?

A. Yes.

Cross-examination.

By Mr. Griffith:

[fol. 118] Q. Do you have before you a copy of Defendant's Exhibit 4, introduced in evidence in this case by the witness E. F. Smith?

A. Yes.

Q. You stated that the gas produced and purchased in the State of Oklahoma by Lone Star Gas Company during the calendar year 1933, as reflected by this Exhibit, and as independently verified by you was approximately 1 690 000 M. cubic feet, and that the total sales of gas by Lone Star Gas Company in the State of Oklahoma for the calendar year of 1933 was 1 135 000 M. cubic feet?

A. Yes.

Q. And did you further testify that that left a net of gas moving over the border in to Texas of 554 000 000 cubic feet?

A. Yes.

Q. Now, examine the map which appears at the end of Defendant's Exhibit 4. How many towns and cities in Oklahoma does the Lone Star Gas Company deliver gas to at the city gates?

A. I think about forty.

Q. To refresh your memory, isn't it twenty six?

A. That may be correct. I would have to count them.

Q. Is any Oklahoma gas delivered to Hollis, Oklahoma?

A. No.

Q. No gas purchased and produced by the company is delivered to Hollis, Oklahoma?

A. No.

[fol. 119] Q. Is any gas purchased or produced by the Lone Star Gas Company in the State of Oklahoma transported and delivered by the Lone Star Gas Company to the town of Frederick?

A. No.

Q. Tipton? Or Mountain Park, Manitou or Snyder?

A. No.

Q. From what source do those towns receive their gas supply?

A. From Wheeler County, Texas.

Q. Do you know how much gas the towns Hollis, Frederick, Snyder, Mountain Park, Tipton and Manitou consume?

A. Judging from the population of those cities as compared with the total population of Oklahoma, I should say about ten per cent of the Oklahoma gas.

Q. Well, assuming that it would be correct to the extent that these towns use ten per cent of the total sales of the company in Oklahoma, that ten per cent would not be distributed from Oklahoma gas produced and/or purchased, would it?

A. No.

Q. Now, will you refer to the towns of Durant, Caddo and Hugo, Oklahoma? Do you see those towns shown on that map?

A. Yes.

Q. Those are supplied by the Lone Star Gas Company at the city gates, are they not?

A. Yes.

[fol. 120] Q. And the town of Achille?

A. Yes.

Q. Do you know from what source, whether it is Oklahoma produced gas or Texas produced gas that is supplied to those small towns, that is Durant, Achille, Caddo and Hugo? That is, at least a considerable portion of the time?

A. Yes. Texas gas goes to those towns for some part of the time.

Q. Part of the time you know Texas produced and/or purchased gas is delivered to those towns?

A. Yes.

Q. Now, to the extent that I have called your attention to Texas produced and/or purchased gas being delivered to some ten or twelve towns in the State of Oklahoma, isn't it true that your figure of 554,000,000 cubic feet as the net amount of gas produced and/or purchased in the State of Oklahoma and moving from the State of Oklahoma into the State of Texas is in error?

A. No, not the net figure. The gross figure might be in error.

Q. The net figure would not be indicative of the net amount of Oklahoma gas produced and/or purchased in the State of Oklahoma and moving over into the State of Texas?

A. No, but the figures would not be off over twenty per cent for that reason.

Q. They might be off to the extent of twenty per cent?

A. I doubt it.

[fols. 121-133] Q. Now, refer back to the year 1929 as shown by Defendant's Exhibit 4, what would be the net amount, assuming the same Oklahoma sales for 1929 for Lone Star Gas Company, what would be the net amount of Oklahoma gas moving over into Texas for that year?

A. I have not checked the figures for 1929. They would not check with the figures furnished us by an audit.

Q. Can you answer the question in respect to the year 1930?

A. No.

Q. 1933 was the only year that you were able to check those figures?

A. Yes.

Q. Isn't it true that as reflected by Defendant's Exhibit 4, that the year 1933 discloses the smallest amount of Oklahoma gas produced and/or purchased by the Company?

A. Yes, I can say that that amount has been going down each year.

[fol. 134] STATE'S EXHIBIT NO. 3—DATA

The following data were gathered from the Report on the Relations of Holding Companies to Operating Companies in Power and Gas Affecting Control. (1).

Official, Address, and Affiliations	Capacity in which serving as of April 30, 1933
-------------------------------------	---

Chase, Frank L.

1915 Wood Street, Dallas, Texas

✓ Community Natural Gas Co.....	Director, President
✓ Lone Star Gas Company.....	Director, Vice-President
✓ North West Texas Gas Company.....	Director, President.
✓ Stamford and Western Gas Company.....	Director, President.

Cobb, D. L.

1915 Wood Street, Dallas, Texas.

✓ Community Natural Gas Company.....	Vice President, Secretary
✓ Galveston Gas Service Company.....	Secretary, Treasurer
✓ Lone Star Gas Company.....	Director, Secretary and Treasurer
Lone Star Gas Corporation.....	Secretary, Treasurer
✓ Municipal Gas Company.....	Director, Vice President Treasurer
✓ Northwest Cities Gas Company.....	Secretary, Treasurer
✓ Stamford & Western Gas Company.....	Secretary, Treasurer
✓ Texas Cities Gas Company.....	Secretary, Treasurer.

[fol. 135]

H. G. Cornatzar

1915 Wood Street, Dallas, Texas.

✓ Community Natural Gas Company.....	Director, Treasurer
Lone Star Gas Corporation.....	Assistant Treasurer
Lone Star Gas Company.....	Assistant Secretary Assistant Treasurer

Crawford, R. A.

1915 Wood Street, Dallas, Texas.

✓ County Gas Company.....	Director
✓ Dallas Gas Company.....	Director
✓ Galveston Gas Service Company.....	Director
✓ Lone Star Gas Company.....	Vice President, Director
Lone Star Gas Corporation.....	Director, Vice President
✓ Stamford and Western Gas Company.....	Director

Denning, L. B.

1915 Wood Street, Dallas, Texas.

✓ County Gas Company.....	Director
✓ Dallas Gas Company.....	Director
✓ Galveston Gas Service Company.....	Vice President, Director

Official, Address, and Affiliations

Capacity in which serving
as of April 30, 1933

(1) Mr. Rayburn, Chairman, Interstate & Foreign Commerce Committee submitted the report February 21, 1934.

✓ Lone Star Gas Company.....	President, Director
✓ Lone Star Gas Corporation.....	President, Director
✓ Municipal Gas Company.....	Director
✓ Texas Cities Gas Company.....	Vice President, Director

[fol. 136]

Gregory, Thomas B.

800 Union Trust Building, Pittsburgh, Pa.

Lone Star Gas Corporation.....	Director, Vice President.
✓ Galveston Gas Service Company.....	Director, Vice President.

Griffith, Karl F.

1915 Wood Street, Dallas, Texas.

✓ Community Natural Gas Company.....	General Counsel
✓ Galveston Gas Service Company.....	General Counsel
✓ Lone Star Gas Company.....	Director, Vice President, General Counsel.
Lone Star Gas Corporation.....	Director, Vice President, General Counsel
✓ Municipal Gas Company.....	General Counsel
✓ Stamford & Western Gas Company.....	Director, General Counsel
✓ Texas Cities Gas Company.....	General Counsel

Hulcy, D. A.

1915 Wood Street, Dallas, Texas.

Lone Star Gas Company.....	Assistant to President
Lone Star Gas Corporation.....	Assistant to President.
✓ Texas Cities Gas Company.....	Director, Assistant Secretary, Assistant Treasurer

[fol. 137]

Kizer, C. C.

301 S. Harwood Street, Dallas, Texas

✓ County Gas Company.....	Director, Treasurer
✓ Dallas Gas Company, The.....	Director, Treasurer

May, C. L.

1915 Wood Street, Dallas, Texas.

✓ Community Natural Gas Company.....	Director, Vice President
✓ Stamford & Western Gas Company.....	Director, Vice President
✓ Texas Cities Gas Company.....	Director

Redding, R. M.

301 S. Harwood Street, Dallas, Texas

✓ Texas Cities Gas Company.....	Director, Vice President
✓ Dallas Gas Company.....	Chief Engineer

Soper, R. G.

301 South Harwood Street, Dallas, Texas

✓ {County Gas Company.....	Director)
{County Gas Company.....	Vice President, Secretary)
✓ Dallas Gas Company, The.....	Director, Vice President Secretary
✓ Municipal Gas Company.....	Director

(✓) Indicates the company and official capacity is recorded in the Annual report filed by that company with the Gas Utilities Division.

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RAILROAD COMMISSION OF TEXAS

GAS UTILITIES DIVISION

GROSS RECEIPTS TAX STATEMENT

FOR GAS UTILITIES

Dallas, Texas, January 26th 1932

To the Railroad Commission of Texas,

Austin, Texas

Gentlemen:

In compliance with Article 6060 Revised Civil Statute of Texas, 1925, I have to report the gross receipt of

Lone Star Gas Company

of Dallas

Texas

a gas utility, from all the

business done by it as such within the State of Texas for the quarter ended

1931, amounted to

\$ 2,288,567.40

One-fourth of one per cent of which equals

\$ 5,721.43

Make remittance payable to "Treasurer, State of Texas," but mail same, together with this report, to Railroad Commission of Texas

DISPOSITION MADE OF GAS

FED 1 - 1932

Give below in detail the information asked for.

RAILROAD COMMISSION

For Pipe Line Companies

(a.) Sold to Distributing Companies	Name of Distributing Company	No. of M. Cu. Ft.	Price per M. Cu. Ft.	Total Receipts
-------------------------------------	------------------------------	-------------------	----------------------	----------------

Lone Star Gas Company
Fourth Quarter of 1931

	M. Cu. Ft.	Rate	Amount
Dallas Gas Company	1 902 552	.3068	583 713 31
County Gas Company	464 655	.3935	182 857 57
Lone Star Gas Company - Fort Worth	1 412 170	.4566	616 640 82
Municipal Gas Company	1 066 923	.3217	343 211 29
Gainesville Gas and Electric Co.	70 856	.2987	21 162 49
Texas Cities Gas Company	402 848	.3233	130 249 96
Washachle Gas Company	26 899	.3641	9 793 44
Shasta Oil Company	71 479	.1100	7 862 69
West Texas Utilities Company	42 517	.2119	9 010 82
Community Natural Gas Company	1 466 228	.3152	462 137 88
Total	6 987 107	.5416	2 366 640 27

"C"

Miscellaneous - Texas

Grand Total

90% of Grand Total

90% of the amount of gas delivered in Texas for the past quarter was from gas produced and purchased in Texas; 10% was from the State of Oklahoma. The Company, therefore, makes this payment on 90% of the receipts as indicated above.

For Pipe Line Companies—Continued

(b.) Sold to other Pipe Line Cos.	Name of Pipe Line Co.	No. of M. Cu. Ft.	Price per M. Cu. Ft.	Total Receipts
				\$
				\$
				\$
				\$

(If additional space is needed attach sheet with information)

(c.) Industrial and Commercial Sales

AFFIDAVIT

The State of Texas,

County of Dallas

Before me, the undersigned authority, on this day personally appeared,

D.L. Cobb

, who being by me duly sworn, on oath states that he is Treasurer

of Lone Star Gas Company

, a gas utility; that the foregoing statement shows the

gross receipts of said

Lone Star Gas Company

from all business done

by it in the State of Texas for the period indicated and that said statement is true and correct.

Subscribed and sworn to before me, this the

29

day of

January

1932

(Seal)

Chas. G. Hester

Notary Public

Dallas

County, Texas

RAILROAD COMMISSION OF TEXAS

GAS UTILITIES DIVISION

GROSS RECEIPTS TAX STATEMENT

FOR GAS UTILITIES

Dallas, Texas, April 29th 1932

To the Railroad Commission of Texas,
Austin, Texas

Gentlemen:

In compliance with Article 6060 Revised Civil Statute of Texas, 1925, I have to report the gross receipt of

Lone Star Gas Company

of Dallas, Texas, a gas utility, from all the

business done by it as such within the State of Texas for the quarter ended MAR 31 1932

1932, amounted to \$3,093,236.29

One-fourth of one per cent of which equals

\$7,733.09

Make remittance payable to "Treasurer, State of Texas," but mail same, together with this report, to Railroad Commission of Texas

DISPOSITION MADE OF GAS

Give below in detail the information asked for.

For Pipe Line Companies

(a.) Sold to Distributing Companies

No. of M.
Cu. Ft.Price per
M. Cu. Ft.Total
Receipts

Lone Star Gas Company

First Quarter of 1932.

	M. Cu. Ft.	Rate	Amount
Dallas Gas Company	2 279 007	.3129	713 029 40
County Gas Company	786 840	.3958	311 351 56
Lone Star Gas Company-Fort Worth	1 995 417	.4571	912 260 97
Municipal Gas Company	1 303 950	.3421	446 103 11
Gainesville Gas & Electric Company	83 670	.3598	30 055 23
Texas Cities Gas Company	535 925	.3304	177 035 58
Waxahachie Gas Company	38 869	.3833	15 597 48
Shasta Oil Company	71 048	.1115	7 941 63
Community Natural Gas Company	1 738 653	.3526	613 090 22
Total	8 827 172	.3780	3 283 425 18

"C"
Miscellaneous - Texas

Grand Total

88% of Grand Total

88% of the amount of gas delivered in Texas for the past quarter was from gas produced and purchased in Texas, 12% was from the State of Oklahoma. The Company, therefore, bases this payment on 88% of the receipts as indicated above.

138-b

For Pipe Line Companies—Continued

(b.) Sold to other Pipe Line Cos.	Name of Pipe Line Co.	No. of M. Cu. Ft.	Price per M. Cu. Ft.	Total Receipts
				\$
				\$
				\$
				\$
(If additional space is needed attach sheet with information)				
(c.) Industrial and Commercial Sales				\$

AFFIDAVIT

The State of Texas,

County of Dallas

Before me, the undersigned authority, on this day personally appeared,

D. L. Cobb

, who being by me duly sworn, on oath states that he is

of Lone Star Gas Company

, a gas utility; that the foregoing statement shows the

gross receipts of said

Lone Star Gas Company

from all business done

by it in the State of Texas for the period indicated and that said statement is true and correct.

Subscribed and sworn to before me, this the 27 day of April 1937

(Seal)

Treasurer.

Charles J. Hines, Jr.

Notary Public Dallas County, Texas

FORM GU-2
RAILROAD COMMISSION OF TEXAS
GAS UTILITIES DIVISION
GROSS RECEIPTS TAX STATEMENT
FOR GAS UTILITIES

Dallas, Texas, July 30 19 33

To the Railroad Commission of Texas,
 Austin, Texas

Gentlemen:

In compliance with Article 6060 Revised Civil Statute of Texas, 1925, I have to report the gross receipt of

Lone Star Gas Company

of Dallas, Texas

, a gas utility, from all the

business done by it as such within the State of Texas for the quarter ended

JUN 30 1932

19, amounted to

\$ 1,565,661.39 ✓

One-fourth of one per cent of which equals

\$ 3,914.15 ✓

Make remittance payable to "Treasurer, State of Texas," but same, together with this report, to Railroad Commission of Texas

RECEIVED

JUL 30, 1932

For Pipe Line Companies

DISPOSITION MADE OF GAS

Give below in detail the information asked for.

RAILROAD COMMISSION

(a) Sold to Distributing Companies Name of Distributing Company No of M. Cu. Ft. Second Quarter of 1932.

Price per M. Cu. Ft. Receipts

"A"	"B"	"C"	"D"
Dallas Gas Company	M. Cu. Ft.	Rate	Amount
County Gas Company	989 054	.3604	357 382 50
Lone Star Gas Company-Fort Worth	338 785	.3894	131 399 04
Municipal Gas Company	1 157 868	.4366	505 281 40
Gainesville Gas and Electric Co.	625 601	.3988	187 017 54
Texas Cities Gas Company	39 751	.3988	15 468 49
Waxahachie Gas Company	239 191	.3099	73 163 36
Shasta Oil Company	11 765	.3966	4 666 39
Community Natural Gas Company	44 188	.1153	5 005 06
	788 593	.3839	298 946 93
Total	4 864 753	.3392	1 446 750 71

"C" Miscellaneous - Texas

Miscellaneous - Texas	1 115 732	.1500	167 353 20
Grand Total	5 380 486	.3000	1 614 083 91
97% of Grand Total	5 219 070	.3000	1 565 661 39 ✓

97% of the amount of gas delivered in Texas for the past quarter was from gas produced and purchased in Texas, 5% was from the State of Oklahoma. The Company, therefore, bases this payment on 97% of the receipts as indicated above.

138-d

For Pipe Line Companies—Continued

(b.) Sold to other Pipe Line Cos.	Name of Pipe Line Co.	No. of M. Cu. Ft.	Price per M. Cu. Ft.	Total Receipts
				\$
				\$
				\$
				\$

(If additional space is needed attach sheet with information)

(c.) Industrial and Commercial Sales

(d) Sold to Domestic Consumers

Name of Town				
				\$
				\$
				\$
				\$
				\$
				\$

(if additional space is needed attach sheet with information)

AFFIDAVIT

The State of Texas,

County of Dallas Before me, the undersigned authority, on this day personally appeared,

D. L. Cobb, who being by me duly sworn, on oath states that he is Treasurer

of Lone Star Gas Company, a gas utility; that the foregoing statement shows the

gross receipts of said Lone Star Gas Company from all business done by it in the State of Texas for the period indicated and that said statement is true and correct.

[Signature]
Treasurer.

Subscribed and sworn to before me, this the 17 day of July, 1937

(Seal)

[Signature]
Notary Public Dallas County, Texas

RAILROAD COMMISSION OF TEXAS

GAS UTILITIES DIVISION

GROSS RECEIPTS TAX STATEMENT

FOR GAS UTILITIES

Dallas, Texas, October 29 1932

To the Railroad Commission of Texas,
Austin, Texas

Gentlemen:

In compliance with Article 6060 Revised Civil Statute of Texas, 1925, I have to report the gross receipt of

Lone Star Gas Company

of Dallas Texas, a gas utility, from all the

business done by it as such within the State of Texas for the quarter ended SEP 30 1932

1932, amounted to \$1,207,308.92

One-fourth of one per cent of which equals \$3,018.27

404
303
301
L

Make remittance payable to "Treasurer, State of Texas," but mail same, together with this report, to Railroad Commission of Texas.

DISPOSITION MADE OF GAS

Give below in detail the information asked for.

For Pipe Line Companies

(a.) Sold to Distributing Companies	Name of Distributing Company	No. of M. Cu. Ft.	Price per M. Cu. Ft.	Total Receipts
-------------------------------------	------------------------------	-------------------	----------------------	----------------

Lone Star Gas Company
Third Quarter of 1932.

"A"	M. Cu. Ft.	Rate	Amount
Dallas Gas Company	905 137	.2374	214 961 17
County Gas Company	284 542	.3830	108 985 18
Lone Star Gas Company - Fort Worth	889 366	.3839	341 513 79
Municipal Gas Company	583 342	.2651	154 085 18
Gainesville Gas and Electric Co.	37 954	.2749	10 434 61
Texas Cities Gas Company	200 076	.2945	58 935 17
Waxahachie Gas Company	8 681	.3806	3 304 06
Shasta Oil Company	39 899	.1150	4 589 34
Community Natural Gas Company	724 283	.2811	203 601 64
Total	3 673 270	.2997	1 101 016 14

"C"

Miscellaneous - Texas

Grand Total	4 846 616	.2624	1 219 505 96
99% of Grand Total	4 800 150	.2624	1 207 308 92
	46 466		

99% of the amount of gas delivered in Texas for the past quarter was from gas produced and purchased in Texas, 1% was from the State of Oklahoma. The Company, therefore, bases this payment on 99% of the receipts as indicated above.

138-f

For Pipe Line Companies—Continued

(b.) Sold to other Pipe Line Cos.	Name of Pipe Line Co.	No. of M. Cu. Ft.	Price per M. Cu. Ft.	Total Receipts
				\$
				\$
	✓			\$
				\$

(If additional space is needed attach sheet with information)

(c.) Industrial and Commercial Sales

(d) Sold to Domestic Consumers

Name of Town	Total Receipts
	\$
	\$
	\$
✓	\$
	\$
	\$
	\$

(if additional space is needed attach sheet with information)

AFFIDAVIT

The State of Texas,

County of Dallas Before me, the undersigned authority, on this day personally appeared,

D. L. Cobb, who being by me duly sworn, on oath states that he is Treasurer

of Lone Star Gas Company, a gas utility; that the foregoing statement shows the gross receipts of said Lone Star Gas Company from all business done by it in the State of Texas for the period indicated and that said statement is true and correct.

[Signature]

Treasurer

Subscribed and sworn to before me, this the 18 day of October, 1932

(Seal)

[Signature]

Notary Public Dallas County, Texas

RAILROAD COMMISSION OF TEXAS

GAS UTILITIES DIVISION

GROSS RECEIPTS TAX STATEMENT

FOR GAS UTILITIES

Dallas, Texas, January 30 1933

To the Railroad Commission of Texas,

Austin, Texas

Gentlemen:

In compliance with Article 6060 Revised Civil Statute of Texas, 1925, I have to report the gross receipt of

Lone Star Gas Company

of Dallas, Texas, a gas utility, from all the

business done by it as such within the State of Texas for the quarter ended December 31

1932, amounted to \$2,784,997.38

One-fourth of one per cent of which equals \$6,962.49

Make remittance payable to "Treasurer, State of Texas," but same, together with this report, to Railroad Commission of Texas

DISPOSITION MADE OF GAS

Give below in detail the information asked for.

For Pipe Line Companies

(a.) Sold to Distributing Companies

No. of M.
Cu. Ft.Price per
M. Cu. Ft.Total
ReceiptsLone Star Gas Company
Fourth Quarter 1932.

	M. Cu. Ft.	Rate	Amount
Dallas Gas Company	2 104 689	.3051	637 980 02
County Gas Company	725 336	.3934	286 364 78
Lone Star Gas Company - Fort Worth	1 499 007	.4536	679 829 54
Municipal Gas Company	1 124 437	.3348	378 722 45
Gainesville Gas and Electric Company	71 693	.3227	23 137 84
Texas Cities Gas Company	493 634	.3305	163 138 43
Waxahachie Gas Company	29 819	.3661	10 975 28
Shasta Oil Company	43 317	.1141	4 944 38
Community Natural Gas Company	1 571 853	.3868	613 380 25
Total	7 663 725	.3520	2 797 422 91

Miscellaneous - Texas

Grand Total

93% of Grand Total

93% of the amount of gas delivered in Texas for the past quarter was from gas produced and purchased in Texas, 7% was from the State of Oklahoma. The Company, therefore, bases this payment on 93% of the receipts as indicated above.

138-h

For Pipe Line Companies—Continued

(b.) Sold to other Pipe Line Cos.	Name of Pipe Line Co.	No. of M. Cu. Ft.	Prices per M. Cu. Ft.	Total Receipts
				\$
				\$
				\$
				\$
(If additional space is needed attach sheet with information)				
(c.) Industrial and Commercial Sales				\$
(d) Sold to Domestic Consumers				
	Name of Town			\$
				\$
				\$
				\$
				\$
				\$
(If additional space is needed attach sheet with information)				

AFFIDAVIT

The State of Texas,

County of Dallas

Before me, the undersigned authority, on this day personally appeared,

D. L. Cobb

, who being by me duly sworn, on oath states that he is Treasurer

of Lone Star Gas Company

, a gas utility; that the foregoing statement shows the

gross receipts of said

Lone Star Gas Company

from all business done

by it in the State of Texas for the period indicated and that said statement is true and correct.

Subscribed and sworn to before me, this the 30 day of February, 1933.

(Seal)

Notary Public Dallas County, Texas

FORM 60-2
RAILROAD COMMISSION OF TEXAS
GAS UTILITIES DIVISION

GROSS RECEIPTS TAX STATEMENT

FOR GAS UTILITIES

Dallas, Texas, April 29th 1933

To the Railroad Commission of Texas,
 Austin, Texas

Gentlemen:

In compliance with Article 6060 Revised Civil Statute of Texas, 1925, I have to report the gross receipt of

Lone Star Gas Company

of Dallas, Texas, a gas utility, from all the

business done by it as such within the State of Texas for the quarter ended **MAR 31 1933**

1933, amounted to **\$2,960,873.68**

One-fourth of one per cent of which equals **\$7,402.19**

Make remittance payable to "Treasurer, State of Texas," but mail same, together with this report, to Railroad Commission of Texas

DISPOSITION MADE OF GAS

Give below in detail the information asked for.

For Pipe Line Companies

(a.) Sold to Distributing Companies	Name of Distributing Company	No. of M. Cu. Ft.	Price per M. Cu. Ft.	Total Receipts
-------------------------------------	------------------------------	-------------------	----------------------	----------------

RECEIVED
 MAY 1, 1932
 GAS UTILITIES DIV.
 RAILROAD COMMISSION

"A"		M. Cu. Ft.	Rate	Amount
Dallas Gas Company		2 042 965	.3022	617 317 39
County Gas Company		797 887	.3935	313 995 68
Lone Star Gas Co. - Fort Worth		1 717 564	.5022	862 534 23
Municipal Gas Company		1 138 213	.5403	387 348 89
Gainesville Gas and Electric Company		88 741	.3479	28 782 80
Texas Cities Gas Company		450 893	.3197	144 131 28
Kearhachie Gas Company		28 63	.3868	11 075 45
Shasta Oil Company		41 043	.1145	4 698 59
Community Natural Gas Company		1 555 978	.3524	548 403 37
Total		7 855 917	.3715	\$ 918 287 66

Lone Star Gas Company
 First Quarter 1933.

"C"		M. Cu. Ft.	Rate	Amount
Miscellaneous - Texas		1 707 838	.1554	265 449 57
Grand Total		9 563 755	.3389	\$ 183 737 23
93% of Grand Total		8 894 898	.3329	\$ 960 875 62

93% of the amount of gas delivered in Texas for the past quarter was from gas produced and purchased in Texas, 7% was from the State of Oklahoma. The Company, therefore, bases this payment on 93% of the receipts as indicated above.

138-J

For Pipe Line Companies—Continued

(b.) Sold to other Pipe Line Cos.	Name of Pipe Line Co.	No. of M. Cu. Ft.	Price per M. Cu. Ft.	Total Receipts
				\$
				\$
				\$
				\$
(If additional space is needed attach sheet with information)				
(c.) Industrial and Commercial Sales				\$
(d) Sold to Domestic Consumers				\$
	Name of Town			\$
				\$
				\$
				\$
				\$
				\$
(If additional space is needed attach sheet with information)				

AFFIDAVIT

The State of Texas,

County of Dallas Before me, the undersigned authority, on this day personally appeared,

D. L. Cobb, who being by me duly sworn, on oath states that he is Treasurer

of Lone Star Gas Company, a gas utility; that the foregoing statement shows the
gross receipts of said Lone Star Gas Company from all business done
by it in the State of Texas for the period indicated and that said statement is true and correct.

[Signature]
Treasurer.

Subscribed and sworn to before me, this the 28 day of April, 1932.

(Seal)

[Signature]
Notary Public Dallas County, Texas

FORM CU-2
RAILROAD COMMISSION OF TEXAS
GAS UTILITIES DIVISION
GROSS RECEIPTS TAX STATEMENT
FOR GAS UTILITIES

Dallas, Texas, July 29th 1933

To the Railroad Commission of Texas,
Austin, Texas

Gentlemen:

In compliance with Article 6060 Revised Civil Statute of Texas, 1925, I have to report the gross receipt of

Lone Star Gas Company

of Dallas, Texas, a gas utility, from all the

business done by it as such within the State of Texas for the quarter ended June 30th

1933, amounted to \$1,511,909.41

One-fourth of one per cent of which equals

\$3,779.77

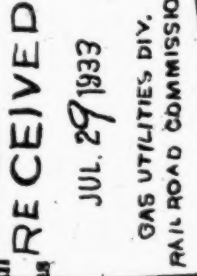
Make remittance payable to "Treasurer, State of Texas," but mail same, together with this report, to Railroad Commission of Texas

DISPOSITION MADE OF GAS

Give below in detail the information asked for.

For Pipe Line Companies

(a.) Sold to Distributing Companies	Name of Distributing Company	No. of M. Cu. Ft.	Price per M. Cu. Ft.	Total Receipts
-------------------------------------	------------------------------	-------------------	----------------------	----------------



Lone Star Gas Company
Second Quarter 1933.

"A"	M. Cu. Ft.	Rate	Amount
Dallas Gas Company	1 086 137	.2626	285 195 87
County Gas Company	317 844	.3764	119 621 35
Lone Star Gas Company - Fort Worth	1 012 602	.4328	438 254 15
Municipal Gas Company	577 824	.3017	174 312 11
Gainesville Gas and Electric Company	42 326	.3187	13 489 66
Texas Cities Gas Company	213 126	.3027	64 516 53
Waxahachie Gas Company	12 125	.3743	4 538 36
Shasta Oil Company	32 511	.1152	3 746 73
Community Natural Gas Company	744 472	.3300	235 792 80
Total	4 008 967	.3341	1 339 467 56

"C" Miscellaneous - Texas

Grand Total	1 616 781	.2757	203 297 14
98% of Grand Total	5 625 748	.2742	1 542 764 70
98% of Grand Total	5 513 233	.2742	1 511 909 41

98% of the amount of gas delivered in Texas for the past quarter was from gas produced and purchased in Texas, 2% was from the State of Oklahoma. The Company, therefore, bases this payment on 98% of the receipts as indicated above.

138-1

For Pipe Line Companies—Continued

(b.) Sold to other Pipe Line Cos.	Name of Pipe Line Co.	No. of M. Cu. Ft.	Price per M. Cu. Ft.	Total Receipts
				\$
				\$
				\$
				\$
(If additional space is needed attach sheet with information)				
(c.) Industrial and Commercial Sales				\$
(d) Sold to Domestic Consumers				\$
	Name of Town			\$
				\$
				\$
				\$
				\$
				\$
(If additional space is needed attach sheet with information)				

AFFIDAVIT

The State of Texas,
County of Dallas Before me, the undersigned authority, on this day personally appeared,
D. L. Cobb, who being by me duly sworn, on oath states that he is Treasurer
of Lone Star Gas Company, a gas utility; that the foregoing statement shows the
gross receipts of said Lone Star Gas Company from all business done
by it in the State of Texas for the period indicated and that said statement is true and correct.

Subscribed and sworn to before me, this the 27 day of July, 1933

(Seal)

Chas. J. G. H. H. H.
Notary Public Dallas County, Texas

RAILROAD COMMISSION OF TEXAS
GAS UTILITIES DIVISIONGROSS RECEIPTS TAX STATEMENT
FOR GAS UTILITIES

Dallas, Texas, October 28th 1933

To the Railroad Commission of Texas,
Austin, Texas

Gentlemen:

In compliance with Article 6060 Revised Civil Statute of Texas, 1925, I have to report the gross receipt of

Lone Star Gas Company

of Dallas, Texas, a gas utility, from all the

business done by it as such within the State of Texas for the quarter ended September 30th

1933, amounted to \$ 1,217,108.21

One-fourth of one per cent of which equals \$ 3,042.77

Make remittance payable to "Treasurer, State of Texas," but mail same, together with this report, to Railroad Commission of Texas

DISPOSITION MADE OF GAS

Give below in detail the information asked for.

For Pipe Line Companies

(a.) Sold to Distributing Companies

Name of Distributing Company

No. of M. Cu. Ft.

Price per M. Cu. Ft.

Total Receipts

RECEIVED

OCT. 30 1933

GAS UTILITIES DIV.
RAILROAD COMMISSIONLone Star Gas Company
Third Quarter 1933.

	M. Cu. Ft.	Rate	Amount
Dallas Gas Company	936 096	.2390	223 725 84
County Gas Company	232 816	.3465	80 663 56
Lone Star Gas Company - Fort Worth	860 670	.3635	312 825 28
Municipal Gas Company	557 395	.2541	141 620 68
Gainesville Gas and Electric Company	37 421	.2541	9 509 37
Texas Cities Gas Company	170 474	.3012	51 347 99
Waxahachie Gas Company	8 652	.3777	3 267 87
Shasta Oil Company	30 781	.1153	3 549 47
Community Natural Gas Company	715 726	.2708	193 784 02
Total	3 550 031	.2874	1 020 294 08

"C"
Miscellaneous - Texas

		Rate	Amount
Grand Total	5 457 154	.2276	1 241 947 16
98% of Grand Total	5 348 010	.2276	1 217 108 21

98% of the amount of gas delivered in Texas for the past quarter was from gas produced and purchased in Texas, 2% was from the State of Oklahoma. The Company, therefore, bases this payment on 98% of the receipts as indicated above.

138-n

For Pipe Line Companies—Continued

(b.) Sold to other Pipe Line Cos.	Name of Pipe Line Co.	No. of M. Cu. Ft.	Price per M. Cu. Ft.	Total Receipts
				\$
				\$
				\$
				\$

(If additional space is needed attach sheet with information)

(c.) Industrial and Commercial Sales

(d) Sold to Domestic Consumers

Name of Town				
				\$
				\$
				\$
				\$
				\$
				\$

(If additional space is needed attach sheet with information)

AFFIDAVIT

The State of Texas,

County of Dallas

Before me, the undersigned authority, on this day personally appeared,

D. L. Cobb

who being by me duly sworn, on oath states that he is Treasurer

of Lone Star Gas Company, a gas utility; that the foregoing statement shows the

gross receipts of said Lone Star Gas Company from all business done by it in the State of Texas for the period indicated and that said statement is true and correct.

[Signature]
Treasurer

Subscribed and sworn to before me, this the 18 day of October 1933

(Seal)

[Signature]

Notary Public Dallas County, Texas

FORM CU-3
RAILROAD COMMISSION OF TEXAS
GAS UTILITIES DIVISION
GROSS RECEIPTS TAX STATEMENT
FOR GAS UTILITIES

To the Railroad Commission of Texas,
 Austin, Texas

Dallas, Texas, January 30 1934.

Gentlemen:

In compliance with Article 6060 Revised Civil Statute of Texas, 1925, I have to report the gross receipt of

Lone Star Gas Company

of Dallas, Texas, a gas utility, from all the

DEC 31 1933

business done by it as such within the State of Texas for the quarter ended

1933, amounted to \$ 2,073,347.17

One-fourth of one per cent of which equals

\$ 5.183,37

Make remittance payable to "Treasurer, State of Texas," but mail same, together with this report, to Railroad Commission of Texas

DISPOSITION MADE OF GAS

Give below in detail the information asked for.

For Pipe Line Companies

(a) Sold to Distributing Companies

No. of M. Cu. Ft.

Price per M. Cu. Ft.

Total Receipts

Lone Star Gas Company
 Fourth Quarter 1933.

"A"	Rate	Amount
Dallas Gas Company	.2879	481 108 32
County Gas Company	.3660	211 609 43
Lone Star Gas Company - Fort Worth	.4668	535 192 97
Municipal Gas Company	.3097	287 671 56
Gainesville Gas and Electric Company	.2805	17 299 85
Texas Cities Gas Company	.3276	104 953 50
Waxahachie Gas Company	.3803	7 686 21
Shasta Oil Company	.1151	4 001 82
Community Natural Gas Company	.2986	322 320 62
Total		1 971 844 28

"C" Miscellaneous - Texas

1 614 660

Grand Total

.2927 2 182 470 71

95% of Grand Total

.2927 2 073 347 17

95% of the amount of gas delivered in Texas for the past quarter was from gas produced and purchased in Texas, 5% was from the State of Oklahoma. The Company, therefore, bases this payment on 95% of the receipts as indicated above.

138-p

For Pipe Line Companies—Continued

(b.) Sold to other
Pipe Line Co.,

Name of Pipe Line Co.

No. of M.
Ca. Ft.

**Price per
M. Cu. Ft.**

Total Receipts

(If additional space is needed attach sheet with information)

(c.) Industrial and Commercial Sales

(d) Sold to Domestic Consumers

Name of Town

(If additional space is needed attach sheet with information)

AFFIDAVIT

The State of Texas,

Count, of Dallas.

Before me, the undersigned authority, on this day personally appeared,

D. L. Cobb

... who being by me duly sworn, on oath states that he is

of Lone Star Gas Company

Lone Star Gas Company

of Lone Star Gas Company, a gas utility; that the foregoing statement shows the gross receipts of said Lone Star Gas Company from all business done by it in the State of Texas for the period indicated and that said statement is true and correct.

Treasurer.

Subscribed and sworn to before me, this the 20 day of January, 1924

(Goal)

Notary Public W. Allen County, Texas

Form 106-0641-981-DM

138-q

FORM CU-3

RAILROAD COMMISSION OF TEXAS

GAS UTILITIES DIVISION

GROSS RECEIPTS TAX STATEMENT

FOR GAS UTILITIES

RECEIVED

APR 30 1934

GAS UTILITIES DIV.
RAILROAD COMMISSION

Dallas, Texas, April 28, 1934

To the Railroad Commission of Texas,
Austin, Texas

Gentlemen:

In compliance with Article 6060 Revised Civil Statute of Texas, 1925, I have to report the gross receipt of

Lone Star Gas Company

of Dallas, Texas, a gas utility, from all the

business done by it as such within the State of Texas for the quarter ended March 31, 1934,

1934, amounted to \$3,065,735.63

One-fourth of one per cent of which equals \$ 7,714.34

Make remittance payable to "Treasurer, State of Texas," but mail same, together with this statement, to Railroad Commission of Texas
First Quarter 1934

	M. O. Ft.	Rate	Amount
Dallas Gas Company	2 125 394	.2886	613 748 06
County Gas Company	1 146 073	.3701	424 192 16
Lone Star Gas Company - Ft Worth	1 764 342	.4730	834 600 29
Municipal Gas Company	1 263 056	.3333	420 987 64
Gainesville Gas and Electric Company	83 269	.3258	27 131 18
Texas Cities Gas Company	477 690	.3235	154 542 78
Waxahachie Gas Company	31 906	.3760	11 997 62
Sharta Oil Company	44 968	.1141	5 131 50
Community Natural Gas Company	1 605 942	.3399	545 868 38
Total	8 543 640	.3556	3 038 199 61

"C" Miscellaneous - Texas

1 839 334 .1521 279 795 69

Grand total

10 383 034 .3196 3 317 995 30

93% of Grand Total

9 656 221 .3196 3 065 735 63

93% of the amount of Gas delivered in Texas for the past quarter was from gas produced and purchased in Texas, 7% was from the State of Oklahoma. The Company, therefore, bases this payment on 93% of the receipts as indicated above.

138-r

For Pipe Line Companies—Continued

(b.) Sold to other Pipe Line Cos.	Name of Pipe Line Co.	No. of M. Cu. Ft.	Price per M. Cu. Ft.	Total Receipts
				\$
				\$
				\$
				\$

(If additional space is needed attach sheet with information)

(c.) Sold to Domestic Consumers

Name of Town				
				\$
				\$
				\$
				\$
				\$
				\$

(If additional space is needed attach sheet with information)

(d.) Industrial and Commercial Sales

\$

AFFIDAVIT

The State of Texas,

County of DALLAS

Before me, the undersigned authority, on this day personally appeared,

D. L. Cobb,

who being by me duly sworn, on oath states that he is Treasurer

of Lone Star Gas Company,

a gas utility; that the foregoing statement shows the

gross receipts of said

Lone Star Gas Company

from all business done

by it in the State of Texas for the period indicated and that said statement is true and correct.

Subscribed and sworn to before me, this the 27 day of April, 1934

(Seal)

Chas. J. Hines, Jr.

Notary Public

Dallas County, Texas

138-8

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[fol. 139]

STATE'S EXHIBIT 5

Compilation of the Total Volume of Gas Delivered in Texas by the Lone Star Gas Company; Total Number of M. C. F. Produced and Purchased in Texas; Percentage of Total Produced and Purchased in Texas; and Percentage of Total Produced and Purchased in Oklahoma.

Year	Total M. C. F. delivered in Texas	Produced and purchased in Texas only	Per cent Texas	Per cent Oklahoma
1931				
1st 1/4.....	11,028,448 M. C. F.	9,594,750 M. C. F.	87%	13%
2nd.....	6,691,110 M. C. F.	6,222,732 M. C. F.	93%	7%
3rd.....	5,337,250 M. C. F.	4,910,270 M. C. F.	92%	8%
4th.....	8,049,734 M. C. F.	7,244,760 M. C. F.	90%	10%
Total..	31,106,542 M. C. F.	27,972,512 M. C. F.	90%	10%
1932				
1st.....	10,094,678 M. C. F.	8,883,316 M. C. F.	88%	12%
2nd.....	5,380,485 M. C. F.	5,219,070 M. C. F.	97%	3%
3rd.....	4,646,616 M. C. F.	4,600,150 M. C. F.	99%	1%
4th.....	10,014,920 M. C. F.	9,313,876 M. C. F.	93%	7%
Total..	30,136,699 M. C. F.	28,016,412 M. C. F.	93%	7%
1933				
1st.....	9,563,755 M. C. F.	8,894,292 M. C. F.	93%	7%
2nd.....	5,625,748 M. C. F.	5,513,233 M. C. F.	98%	2%
3rd.....	5,457,154 M. C. F.	5,348,010 M. C. F.	98%	2%
4th.....	7,455,767 M. C. F.	7,082,978 M. C. F.	95%	5%
Total..	28,102,424 M. C. F.	26,838,513 M. C. F.	95-1/2%	4-1/2%
1934				
1st.....	10,383,034 M. C. F.	9,656,221 M. C. F.	93%	7%

[fols. 140-147]

STATE'S EXHIBIT 6

Statement of Volume of Gas Sold to Gainesville and to Waxahachie Distributing Systems by the Lone Star Gas Company

Year	M. C. F. Gainesville	M. C. F. Waxahachie	Total gas delivered in Texas
1931			
1st.....	95,717	36,545	
2nd.....	56,297	16,307	
3rd.....	41,883	10,990	
4th.....	70,836	26,899	
Total.....	264,733	85 90,741	.29 31,106,542
1932			
1st.....	83,670	32,868	
2nd.....	39,751	11,765	
3rd.....	37,954	8,681	
4th.....	71,693	29,819	
Total.....	233,068	.77 83,133	.28 30,136,699
1933			
1st.....	83,741	28,633	
2nd.....	42,326	12,125	
3rd.....	37,421	8,652	
4th.....	61,680	20,212	
Total.....	224,168	.80 69,622	.25 28,102,424
1934			
1st.....	83,269	.80 31,906	.31 10,383,034

[fol. 148] DEFENDANT'S EXHIBIT 4 (Consisting of the Immediately Following 6 Pages, and Being:

Five Year Summary Gas Transportation

1929-1933

Lone Star Gas Company

Year	Transported thru Oklahoma	Total transported	Per cent transported thru Oklahoma
1929	15,790,131 M	44,625,913 M	35.4
1930	14,087,358 M	42,472,195 M	33.2
1931	9,972,671 M	34,703,119 M	28.7
1932	10,597,693 M	32,967,130 M	32.1
1933	8,138,480 M	31,385,293 M	25.9

Weighted Average Per Cent Transported Thru Oklahoma 31.5

[fol. 149] Year 1929

Gas Transported in Interstate Commerce by Lone Star Gas Company

	M. C. F. (8 oz.)
Chickasha & Nellie Fields	2,981,976
Duncan Field	936,554
Loco Field	474,937
Fox Field	3,393,734
Robberson Field	997,965
Palacine Field	
Shamrock Field	7,004,965

Total Gas Transported Thru Oklahoma . . . 15,790,131

Total Gas Transported from all Sources . . . 44,625,913

Per cent of Total which was Transported Thru Okla. 35.4

[fol. 150]

Year 1930

Gas Transported in Interstate Commerce by Lone Star Gas
Company

	M. C. F. (8 oz.)
Chickasha & Nellie Fields	2,074,735
Duncan Field	591,458
Loco Field	242,210
Fox Field	2,718,338
Robberson Field	835,201
Palacine Field	244,571
Shamrock Field	7,380,845

Total Gas Transported Thru Oklahoma .. 14,087,358

Total Gas Transported from all Sources .. 42,472,195

Per cent of Total which was Transported thru

Okla. 33.2%

[fol. 151]

Year 1931

Gas Transported in Interstate Commerce by Lone Star Gas
Company

	M. C. F. (8 oz.)
Chickasha & Nellie Fields	1,058,047
Duncan Field	651,557
Loco Field	153,940
Fox Field	1,521,928
Robberson Field	296,081
Palacine Field	41,483
Shamrock Field	6,249,635

Total Gas Transported thru Oklahoma .. 9,972,671

Total Gas Transported from all Sources .. 34,703,119

Per cent of Total which was Transported thru

Okla. 28.7%

[fol. 152]

Year 1932

Gas Transported in Interstate Commerce by Lone Star Gas
Company

	M. C. F. (8 oz.)
Chickasha & Nellie Fields	811,993
Duncan Field	216,455
Loco Field	114,574
Fox Field	1,041,899
Robberson Field	313,633
Palacine Field	43,392
Shamrock Field	8,055,747
<hr/>	
Total Gas Transported thru Oklahoma ..	10,597,693
Total Gas Transported from all Sources ..	32,967,130
Per cent of Total which was Transported thru Okla.	32.1%

[fol. 153]

Year 1933

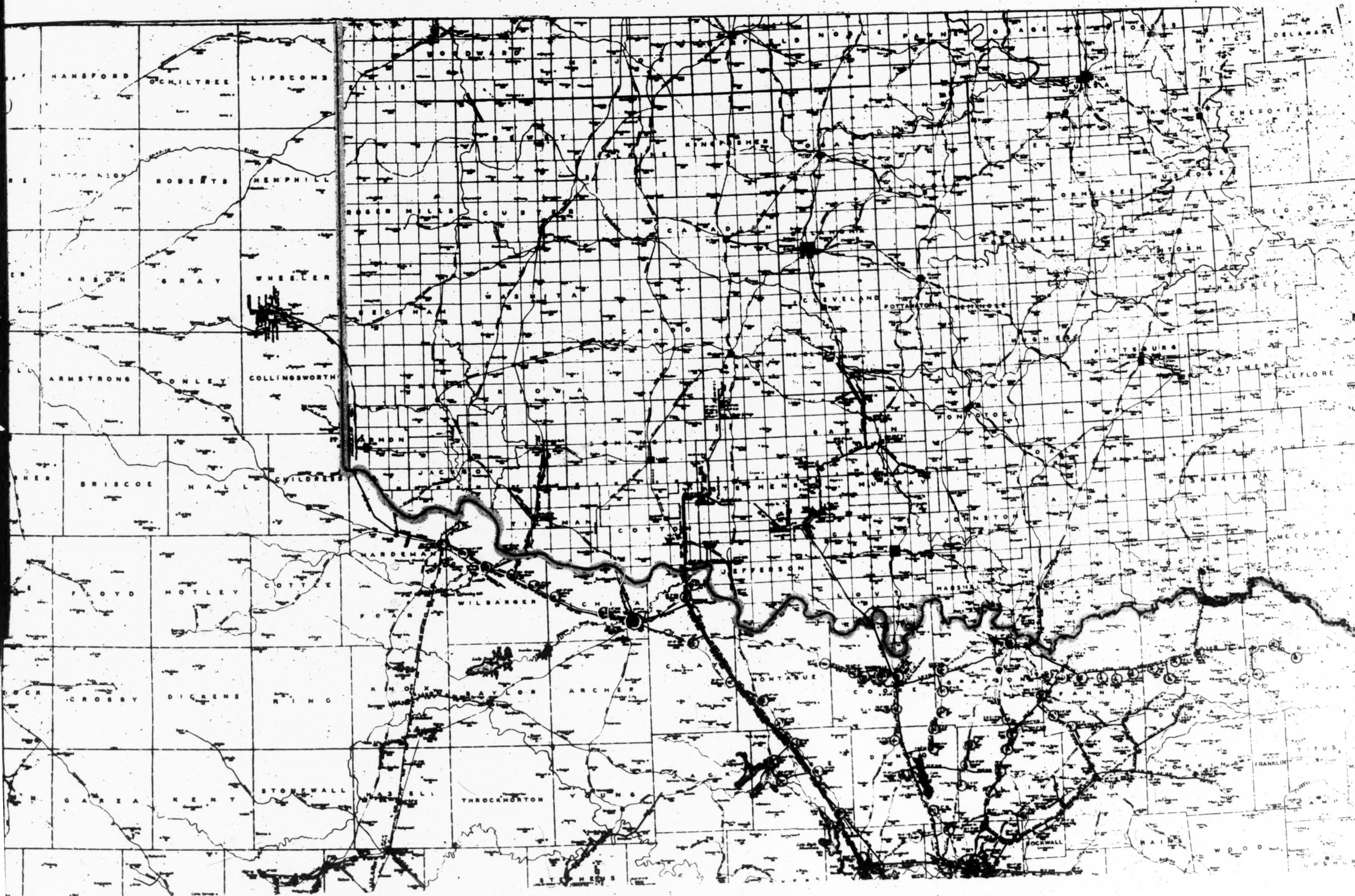
Gas Transported in Interstate Commerce by Lone Star Gas
Company

	M. C. F. (8 oz.)
Chickasha & Nellie Fields	734,629
Duncan Field	54,312
Loco Field	22,580
Fox Field	653,527
Robberson Field	207,807
Palacine Field	17,487
Shamrock Field	6,448,138
<hr/>	
Total Gas Transported thru Oklahoma ..	8,138,480
Total Gas Transported from all Sources ..	31,385,293
Per cent of Total which was Transported thru Okla.	25.9%

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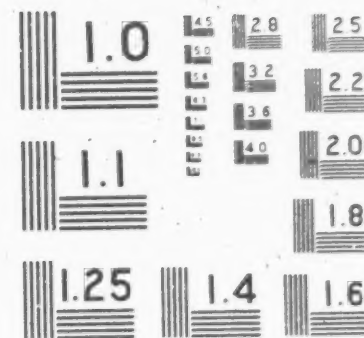
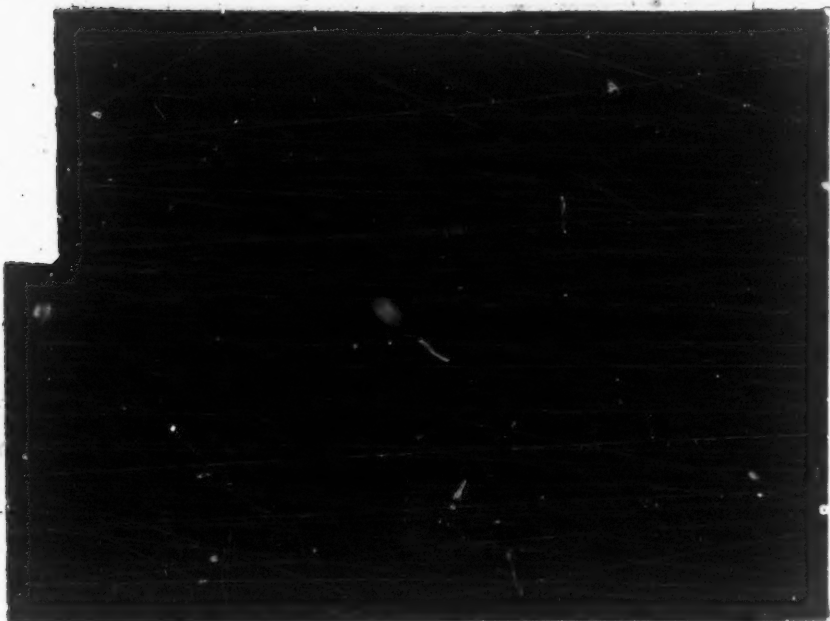
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PAGE

[fol. 1] IN FIFTY-THIRD DISTRICT COURT, TRAVIS COUNTY,
TEXAS

No. 53,033.

THE STATE OF TEXAS, et al.

VS.

LONE STAR GAS COMPANY.

Statement of Facts of Trial on the Merits.

Before Hon. C. A. Wheeler, Judge, and a Jury.

Appearances:

Hon. A. R. Stout, Assistant Attorney General; Hon. W. C. Fitzhugh, Assistant Attorney General, for Plaintiffs.

Karl F. Griffith, Esq., Ogden K. Shannon, Esq., Judge Ben H. Powell, for Defendant.

Monday, June 11, 1934.

[fol. 2] Plaintiffs' Evidence.

C. F. PETET, a witness for plaintiffs, having been duly sworn, testified as follows:

Direct examination:

Questions by Mr. Stout:

Q. State your name, please.

A. C. F. Petet.

[fol. 3] Q. What do you do, Mr. Petet?

A. Secretary of the Railroad Commission of Texas.

Q. How long have you been Secretary?

A. Ten years, or a little better.

Q. I hand you here a document, Mr. Petet. What is it?

A. It is an opinion and order in the matter of an investigation of the city gate rate charged by the Lone Star Gas Company—a copy of the order.

Q. Is it a true and correct copy?—have you examined it sufficiently to verify that?

A. It is.

Q. Turn to page 84, please, sir. What, if anything, is set out on page 84?

Q. Well, is that the order of the Commission on page 84?

A. Yes, sir.

Mr. Stout: We offer that in evidence, if Your Honor please,—the order of the Commission.

The Court: Let's see it. (The Court inspects same) All right, Gentlemen. He is offering what is shown on page 84. Is there any objection?

Mr. Shannon: Yes, sir.

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[fol. 4] OBJECTIONS TO INTRODUCTION OF ORDER OF COMMISSION

Defendant, Lone Star Gas Company, objects to the offer in evidence of the order of the Railroad Commission appearing on page 84 of the printed copy identified by the witness without plaintiffs' offering at the same time and in connection therewith the opinion of the Commission and the [fol. 5] statement of the case appearing on pages 1 and 2 of the printed copy identified by the witness, for the following reasons: First: It is recited on page 84 of the said opinion and order of the Commission and under the terms of the order of the Commission, as follows:

The Court: Now, Mr. Shannon, may I just relieve you maybe a little bit here? They have offered page 84. If they don't offer the other, you may offer it.

Mr. Shannon: I understand that.

The Court: So if you want that in evidence you may put it in without any hesitancy whatever.

Mr. Shannon: But for the purpose of making our record at this time I should like to object to their not offering the entire opinion and order as a whole, rather than offering the order by itself. I realize we have the right later to do that if we choose to do so.

The Court: I understand that at this time they offer the opinion and order, and you object to both of them?

Mr. Shannon: Yes, sir.

The Court: I don't think you can object to their doing it and then to their not doing it—don't blow hot and cold.

Mr. Shannon: Here is what I want to convey to Your Honor: We are going to object to their offering anything—

we object to their offering both the opinion and order. We are also going to object to their offering the order without the opinion. The reasons we don't think are inconsistent. [fol. 6] We think the objections are applicable to each proposition.

The Court: I will hear you.

Mr. Shannon: I simply don't want to be in the attitude of taking an inconsistent position before the Court, but we don't think our position is inconsistent.

The Court: All right.

Mr. Shannon: It is recited on page 84 of the order of the Commission as follows: "The Railroad Commission having instituted a proceeding upon its own motion inquiring into the rates charged by the Lone Star Gas Company for domestic gas sold to distributing companies at the city gate station, hereby finds as a fact that the rate of forty cents per thousand cubic feet as now charged by Lone Star Gas Company is unfair, unjust and unreasonable. Basing its order on the foregoing finding of fact and on such other findings and statements of facts as are set out in the opinion next preceding this order, or in this order.

"It is ordered, adjudged and decreed that effective as of the next billing date the Lone Star Gas Company shall charge, bill and receive for domestic gas at the City gate from all distributing companies served by it, a rate not to exceed thirty-two cents per thousand cubic feet."

It therefore appears from the order of the Commission offered in evidence that the order is based upon the findings and statements of facts set out in the opinion to which it is [fol. 7] annexed. The order of the Commission has no probative force, nor has it any evidentiary value, divorced from the opinion of the Commission and the statements of facts and findings of fact contained therein, inasmuch as it affirmatively appears that the said order is based upon the said findings of fact appearing in the opinion of the Commission. The said order, divorced from the opinion of the Commission, represents a mere arbitrary action on the part of the Commission, which is violative of the due process clause of the Federal Constitution and the rights of this defendant thereunder. The said order of the Commission, referring as it does, to the findings and statements of facts contained in the opinion of the Commission, in effect incorporates those findings and statements into the order, mak-

ing the same a part thereof, and therefore it is not proper to offer the order of the Commission without at the same time offering the opinion and the statements of fact and findings therein, based upon which the Commission arrived at the conclusion stated in the order.

We further object because plaintiffs' Second Amended Original Petition is allegedly predicated upon, not only the order of the Commission, but the opinion as well, which order and opinion are both attached to plaintiffs' Second Amended Original Petition and referred to therein as Exhibit "A"; and, inasmuch as their said suit is predicated upon both the opinion and order, the said order should not be admitted in evidence unless the opinion, upon which it is [fol. 8] based, is offered and received in evidence at the same time.

Those are our objections to their action in offering the order without at the same time offering the opinion in connection with it. We have some additional objections to their offering the order in any event, even though they offer it in this way.

The Court: You may state your objections.

Mr. Shannon: Defendant, Lone Star Gas Company, objects to the introduction of the order of the Railroad Commission in evidence, for the following reasons:

1. If the purpose of the plaintiffs' suit is to enjoin defendant from charging in excess of thirty-two cents per thousand cubic feet for gas delivered at the city gates of various towns and cities served by Lone Star Gas Company, exclusively in intrastate commerce—that is to say, if the purpose of plaintiffs' suit is to prevent Lone Star Gas Company from charging the various distributing companies in excess of thirty-two cents per thousand cubic feet for gas moving throughout its entire transit up to the city gate in intrastate commerce, the purpose and intent of plaintiffs' suit in this connection not clearly appearing, then the said order of the Railroad Commission and the finding therein that thirty-two cents is a reasonable price to be charged for all gas is not prima facie evidence, nor is it any evidence of the reasonableness of a charge of thirty-two cents per thousand cubic feet as the price to be received for gas moving exclusively in intrastate commerce, or for gas at the city gates of various towns and cities to which defendant sells gas in intrastate commerce; and, therefore, the said order

of the Commission is irrelevant and immaterial to any issue in this case and of no probative force and effect.

[fol. 9] 2. If the purpose of plaintiffs' suit is as above stated, then the material inquiry in this case upon a favorable determination of which rests plaintiffs' right to relief is whether or not 32¢ per thousand cubic feet is a reasonable price to be charged for gas moving throughout its entire transit up to the city gates in intra-state commerce. It affirmatively appears from the order and opinion of the Railroad Commission that the Railroad Commission did not find that 32¢ was a reasonable price to be charged for gas moving in intra-state commerce exclusively, that is to say, without reference to the reasonableness of the rate to be charged for all gas sold by defendant which, as appears from the order and opinion of the Commission, is in part gas moving in interstate commerce, but on the other hand found that 32¢ was a reasonable amount to be charged for all gas, including that moving in interstate commerce; it, therefore, appears that the Railroad Commission in its aforesaid opinion and order was not considering and did not determine what would be a reasonable rate to be charged for gas moving exclusively in intra-state commerce. It does not appear from the opinion and order of the Railroad Commission that the Commission would have found that 32¢ was a reasonable charge for gas moving throughout its entire transit up to the city gates in intra-state commerce, had it been advised or had it known that it did not have the right to determine and enforce a rate applicable to all gas sold by the defendant. To permit the introduction of the order of the Commission under the circumstances, opens the field for speculation and conjecture as to what the Railroad Commission might have done under other circumstances. Accordingly, the opinion and order of the Railroad Commission are irrelevant and immaterial to any issue in this case and of no probative force and effect and the Court should not receive same in evidence.

3. If the purpose of plaintiffs' suit is as above stated, then the order of the Railroad Commission sought to be introduced in evidence cannot be made the basis of the relief sought by plaintiffs and the introduction of the same will constitute a variance between the allegations contained in the plaintiffs' second amended original petition and the

proof offered in the form of the said order and opinion, for the reason that in order for plaintiffs to maintain their said suit and to be entitled to the relief sought it will be necessary for them to prove that 32¢ per thousand cubic feet is a reasonable rate to be charged for gas transported and sold in intra-state commerce to the various distributing companies; whereas, the order of the Commission sought to be introduced in evidence does not determine the reasonableness of the price to be charged for such gas, but on the contrary affirmatively shows that it fixes and purports to fix what is alleged to be a reasonable charge for all gas sold and delivered by defendant to various distributing companies. Wherefore, the Court should not permit [fol. 11] the introduction of the said order and thus permit the allegations of plaintiffs' second amended original petition to be varied by this character of proof.

4. If the purpose of plaintiffs' suit is as above stated, then the order of the Railroad Commission is irrelevant and immaterial and has no bearing on any issue in this case and should not be received in evidence and is of no probative force and effect because it is based upon the findings of fact set out in the opinion of the Commission from which it appears that the Commission findings that 32¢ per thousand cubic feet is a reasonable rate to be charged for gas sold by the defendant of various distributing companies, is based upon an evaluation of defendant's properties, both in Texas and in Oklahoma, and a determination of gross revenues, expenses, and so forth, in connection with the operation of defendant's entire pipe line properties, both in Texas and in Oklahoma, and in connection with its entire business, both intra-state and interstate. It, therefore, appears that the Railroad Commission's determination that 32¢ was a reasonable rate for all gas upon proof of an entirely different kind and character from that which plaintiffs might be required to offer herein if they would establish the fact that 32¢ is a reasonable rate to be charged for gas moving throughout its entire transit and up to the city gates in intra-state commerce; and the order of the Commission, predicated as it is upon proof of the kind and character offered before the Commission, is not evidence [fol. 12] that 32¢ is a reasonable rate for intra-state gas when the issues in this case may be entirely different and other than those considered by the said Commission.

5. If the order of the Railroad Commission has any force or effect and is material to any issue in this case, it must be on the theory that it is predicated upon findings of fact made by the Railroad Commission in an investigation held by it. It appears from said findings of fact upon which the order is based that the Commission did not undertake to determine what was a reasonable rate to be charged for gas moving in intra-state commerce exclusively, that is to say, without reference to the question of the reasonableness of a rate for all gas sold by defendant, which, as appears from the order and opinion of the Commission, is in part gas moving in interstate commerce, and that it did not pursue a theory in its investigation calculated to arrive at this determination. Therefore, the order of the Commission has no probative force or effect and is incompetent as testimony, germane to the inquiry of whether or not 32¢ is a reasonable rate to be charged for gas moving exclusively in intrastate commerce, which determination is the very basis of the relief asked by plaintiffs herein, if the purpose of their said suit is as has been stated hereinbefore.

6. If plaintiffs' second amended petition is to be construed as undertaking to prevent defendant from charging [fol. 13] in excess of 32¢ for all gas, whether moving to intrastate or interstate commerce, wherever any particular city or town is supplied in part with gas moving in intra-state commerce, then the said order of the Commission has no probative force or effect, and should not be admitted in evidence, and is irrelevant and immaterial, because it affirmatively appears from the opinion and order of the Railroad Commission that Lone Star Gas Company is engaged not only in intra-state but also interstate business in supplying gas to various distributing companies at the city gates of various towns and cities in Texas, and that the said order of the Railroad Commission was intended to, and does operate upon, affect and burden such interstate business of Lone Star Gas Company as is done in the State of Texas. It, therefore, appears that the aforesaid order of the Railroad Commission is void in so far as it was intended to and does in fact operate upon and affect interstate commerce directly, and being void, the same is of no probative force or effect, and has no validity prima

facie or otherwise, and the Court should not permit the introduction of same in evidence.

7. It affirmatively appears from the opinion and order of the Railroad Commission that the same was intended to apply to the interstate business carried on by defendant, and that it was the purpose and intention of the Railroad Commission of Texas in the promulgation and enforcement of said order to prevent Lone Star Gas Company [fol. 14] from charging and collecting in excess of 32¢ per thousand cubic feet for gas delivered by it at the city gates and moving in interstate commerce up to and at the time of such delivery. It, therefore, appears that said opinion and order of the Railroad Commission are unconstitutional and in violation of the Commerce Clause of the Federal Constitution, and being unconstitutional and invalid in part, and the said order being indivisible, it therefore appears that the order is void in its entirety and cannot be enforced at all; and, therefore, the said order being unenforceable and being void in toto, has no probative force or effect and the Court should not permit the same to be offered in evidence.

Now, your Honor, so that I might get myself straight with the Court on blowing hot and cold, possibly I should have stated that, first, we had our objections to the offer of the order in evidence, same being the objections that I have just urged—seven in number; and, second, that even if we were wrong in those objections, we still wanted to object to the offer of the order without the opinion being offered at the same time. It does not occur to us that there is anything inconsistent in our position.

The Court: Very well. The objections are overruled.

Mr. Shannon: Note our exception.

[fol. 15] Mr. Griffith: No; no ground of objection is made to go to the lack of certification.

The Court: May I suggest that in offering this, if you are going to offer page 84, that you tear it out of one of these books and hand it over there, so it won't get mixed up.

Mr. Stout: All right.

[fols. 16-18] Mr. Stout: We ask that this order of the Railroad Commission be marked as Plaintiff's Exhibit No. 1.

(Thereupon the document above referred to was marked as Plaintiffs' Exhibit No. 1. This exhibit appears in Book of Exhibits 6, page 3562.)

Q. That is all, Mr. Petet.

Cross-examination.

Questions by Mr. Griffith:

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[fol. 19] Q. Will you please examine this pamphlet, Mr. Petet? Examine the last page in there, Mr. Petet. Does that pamphlet purport to be a copy of the opinion and order in the matter of an investigation of the city gate rate [fol. 20] charged by the Lone Star Gas Company, entered by the Railroad Commission of Texas in Gas Utilities Docket No. 75?

A. It does.

Q. Following page 86 in that pamphlet, does your certification appear in the following words: "I, C. F. Petet, Secretary of the Railroad Commission of Texas, do hereby certify that the attached pamphlet of 86 pages is a true and correct copy of an opinion and order issued by the Railroad Commission of Texas on September 13, 1933, in its Gas Utilities Docket No. 75, in the matter of an investigation of the city gate rate charged by the Lone Star Gas Company. Given under my hand and the Seal of the Railroad Commission of Texas, this the 20th day of September, 1933. C. F. Petet, Secretary, Railroad Commission of Texas."

A. Yes.

Q. And did you affix the seal of the Railroad Commission of Texas to that certificate?

A. Yes.

Q. We will ask the reporter to mark this for identification. That is the pamphlet so identified by the witness.

(Thereupon said pamphlet was marked by the reporter with the initials HB 6/12/34, for purposes of identification.)

Q. Were the opinion and order of the Railroad Commission of Texas in Gas Utilities Docket No. 75, in the matter of an investigation of the city gate rate charged by the Lone Star Gas Company, issued on the same day?

[fol. 21] A. I presume they were.

Q. That's all.

Mr. Stout: We next offer in testimony the Stay Order granted by the Federal Court in the case of Lone Star Gas Company, Plaintiffs, vs. Railroad Commission of Texas, et al., defendants, No. 467 in equity, in the District Court of the United States for the Western District of Texas, Austin Division.

(Thereupon the document above referred to was marked as Plaintiffs' Exhibit No. 2.)

[fol. 22] We now offer in evidence, if Your Honor, please, stipulation and agreement signed by attorneys for both sides, and this being in cause No. 53,033, State of Texas, et al., vs. Lone Star Gas Company, in the District Court of Travis County, Texas, Fifty-third Judicial District, and this being marked "Stipulation".

(Thereupon the document above referred to was marked as Plaintiffs' Exhibit No. 3, and read to the jury.)

Mr. Stout: We rest, if the Court please.

Mr. Shannon: We have a motion to make, if the Court please.

[fol. 23]

[Title omitted]

DEFENDANT'S REQUEST FOR PEREMPTORY INSTRUCTION

GENTLEMEN OF THE JURY:

You are instructed herein that you will return a verdict in this case for the defendant, Lone Star Gas Company, and the form of your verdict will be:

"We, the jury, find for the defendant, Lone Star Gas Company, and against the plaintiffs, The State of Texas, et al.
— —, Foreman."

Karl F. Griffith, Thompson & Barwise, Ben H. Powell,
Attorneys for Defendant, Lone Star Gas Company.

[fol. 24] The above instruction was requested at the conclusion of plaintiffs' testimony and after plaintiffs had rested, and prior to the time defendant, Lone Star Gas Company, offered any testimony and in open court, was considered by the court and plaintiffs' counsel, to whom a copy of the same was furnished, and after due consideration was denied, to which action the defendant, Lone Star Gas Company, in open court, then and there duly excepted.

(Signed) C. A. Wheeler, Judge Fifty-third District Court, Travis County, Texas.

Defendant's Evidence.

Mr. Griffith: If the Court please, the defendant, Lone Star Gas Company, first offers in evidence a copy of the Bill of Complaint in Cause No. 467 in Equity, in the District Court of the United States for the Western District of Texas, Austin Division, in the case styled Lone Star Gas Company, Plaintiff, vs. The Railroad Commission of Texas, et al. I take it that will be Defendant's Exhibit Number 1.

(Thereupon the document above referred to was marked as Defendant's Exhibit No. 1.)

[fol. 25] The defendant next offers in evidence a copy of the Temporary Restraining Order issued by the Honorable Robert J. McMillan, United States District Judge, in Cause Number 467 in Equity, in the District Court of the United States for the Western District of Texas, Austin Division, in the cause styled Lone Star Gas Company, Plaintiff, vs. The Railroad Commission of Texas, et al.

(Thereupon the document above referred to was marked as Defendant's Exhibit No. 2.)

STIPULATION RE ORDER OF FEDERAL COURT

Mr. Griffith: It is hereby stipulated by and between counsel for the plaintiffs and counsel for the defendant, in open court, that the Temporary Restraining Order issued by the Honorable Robert J. McMillan, United States District Judge, and signed by him on the 22nd day of September, A. D. 1933, and which Temporary Restraining Order has just been introduced in evidence and styled or labeled "Defen-

dant's Exhibit No. 2," was duly and properly extended, and was in full force and effect at the time of the institution of this suit in the Fifty-third Judicial District Court of Travis County, Texas.

Is that satisfactory, Mr. Stout?

[fol. 26] Mr. Stout: All right.

Mr. Griffith: The defendant next offers in evidence certified copy of the statement, opinion and order of the Railroad Commission of Texas, entered on September 13, 1933, in Gas Utilities Docket Number 75, in the cause styled, "In the Matter of an Investigation of the City Gate Rate and Charges of the Lone Star Gas Company," this being the same certified copy heretofore identified by Mr. C. F. Petet, Secretary of the Railroad Commission of Texas, the offer of the statement, opinion and order being for the sole purpose of laying a predicate for the attack to be made upon the same as reflected by and set out in the pleadings of the defendant in this case.

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[fol. 27] (Thereupon the document above referred to was marked as Defendant's Exhibit No. 3.)

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[fol. 28] D. A. HULCY, a witness for defendant, having been duly sworn, testified as follows:

[fol. 29] Direct examination.

Questions, by Mr. Griffith:

Q. Your name is D. A. Hulcy?

A. That is correct.

Q. Where do you live?

A. Dallas, Texas.

Q. What is your business, Mr. Hulcy?

A. I am an accountant by profession, presently engaged and employed by Lone Star Gas Company and certain of its affiliated companies.

Q. How long have you been engaged in accounting work?

A. About twenty-two years.

Q. Will you please relate briefly to the Court and jury the general nature of your experience in accounting work?

A. From 1912 until 1919 I was employed in railroad work, starting off in a local station as a clerk. I was there for something over a year, and went into the Auditor's office, where I was employed as a clerk, and for about the last two years I was with the railroad I was Auditor, and remained there until the latter part of 1919. In January of 1920 I was employed by the Lone Star Gas Company. For about the first two or three months after going to work for them my time was spent in special work, analyzing accounts, and other things of that kind. Then I went to work in the construction accounting business for a period of something over a year. I handled all of the charges, construction accounts, posted all charges, checked the records against the records of the Engineering Department to see that all materials and labor were properly accounted for. I then further checked and closed every job order against the construction records to the permanent investment records and made the vouchers covering those charges. At the end of that time, a little over a year after I made my connection with the company, then I was placed on the distribution desk, being charged with the responsibility of making distribution of all manner of charges, operating expenses, capital accounts, and all charges going into the books and records of the company. During that time I made two or three rather extensive trips to the field, where I went over the actual operations, in order that I might have an understanding and better idea of how the proper distribution of charges should be made. I remained on the distribution desk approximately a year. At that time I was made Chief Clerk of the Producing Department—that is, of the accounting section. Acting in that capacity, I had general supervision over the entire personnel employed in that department, charged with the responsibility of checking over and approving the distribution of all charges entering into the books and records of that department of the Lone Star Gas Company. I also made the monthly and annual financial reports covering that department. I stayed in that position for approximately two years, [fol. 31] at which time I was made Chief Clerk of the entire accounting system—that is, the pipe line and producing section. My duties then were about the same as they had been in the producing department, only that they covered both pipe line and producing.

Q. In other words, all ramifications of the company's business?

A. That is quite true, yes, sir. I remained in that place until, I would say, about 1928, at which time I was made Assistant Comptroller of the Lone Star Corporation and all of its underlying companies, of which the Lone Star Gas Company was the principal one. Acting in that capacity, I had general supervision over all accounts of the several companies included in the group. I remained there in that position until the latter part of 1929, at which time I was made assistant to the President of Lone Star Gas Corporation and also of the Lone Star Gas Company. Acting in that capacity, I had general supervision over all of the accounts of all of the companies. I might add that, particularly from 1929 up to date I have had occasion to make investigations of the books and records—that is, of other companies—of the worth of property, of earnings, operating expenses, etc. Those to a certain extent have been checked against the operating cost and property cost of Lone Star Gas Company and certain of its affiliated companies. As of December 31, 1925, I made a valuation of all the oil and gas properties owned by the Lone Star Gas Company, and from 1922 up to 1927 I had charge and actually made the schedules for Federal tax purposes, and since that time they have been made under my general supervision. In addition to those duties—in fact, since 1930—I have been charged with the responsibility of supervision of the accounting section of the Northern Natural Gas group, my position being Secretary and Comptroller of that group of companies, which comprise some seven or eight companies, I would say. I believe, Mr. Griffith, that that is all.

Q. Is the Northern Natural Gas Company of which you speak a company operating on a major scale?

A. Yes, sir; it is. They operate a pipe line system from the Panhandle field in Texas through the States of Oklahoma, Kansas, Nebraska, and into South Dakota, and also through the State of Iowa and on into the Twin Cities—that is, Minneapolis and St. Paul, Minnesota. They also own and operate distribution properties, in addition to the pipe line system that I have just mentioned, to such towns as Rochester, Minnesota, and several Nebraska towns, and Dodge City, Kansas, and other towns adjacent thereto.

Q. In order to give the jury an idea of the scope of operations and of your duties as Secretary and Comptroller of the

Northern Natural Gas Company, I will ask you to state what is the approximate book cost of its gas properties.

A. The actual cash cost of its gas properties is in excess of forty millions of dollars.

Q. Now, as I understood your testimony, Mr. Huley, you have been connected with the Lone Star Gas Company over a period of some fifteen years?

[fol. 33] A. Yes, sir; since January, 1920,—fourteen and a half years.

Q. In the discharge of your duties with that company have you thoroughly familiarized yourself with the company's operations?

A. Yes, sir; I have.

Q. Are you familiar with the books, records and accounts of the company, both in relation to cost of property and investment in property, gross and net operating revenues and operating expenses?

A. Yes, sir; I have. I would say, in addition to being familiar with it at one time, all along during the past fourteen and a half years, I actually performed work entering into almost every account kept in the accounting section of the Lone Star Gas Company.

Q. Are you familiar with the several classifications of accounts covering public utility properties?

A. Yes, sir; I think that I am.

Q. Are the books, records and accounts of Lone Star Gas Company kept in conformity with any standard or recognized classification of accounts?

A. Yes; they are kept in conformity with the classification of accounts prescribed by the American Gas Association; that is worked out by a Uniform Classification Account Committee; their report and their recommendation was accepted by the American Gas Association, and it was completed in the year 1930. That classification of accounts is very similar to the one used in the States of Ohio and [fol. 34] Pennsylvania, and the States of West Virginia has adopted the new classification of accounts; that is by law.

Q. When you say the classification has been adopted by the State of Ohio and other States do you mean that the classification has been adopted by the Public Service Commissions or Public Utility Commissions of those States?

A. That is correct—that is, the commission that has

authority to prescribe accounting classifications for gas properties.

Q. Is that classification substantially in effect as prescribed by the Corporation Commission of the State of Oklahoma, the regulatory body in Oklahoma?

A. Yes, sir; it is very similar to that classification.

Q. Is the classification modeled and patterned after the Interstate Commerce Commission's classification of accounts?

A. It is.

Q. Mr. Huley, are you familiar with the opinion and order of the Railroad Commission of date September 13, 1933, which has been attached and annexed to the plaintiff's Second Amended Original Petition in this case and which has been introduced in evidence and labeled Defendant's Exhibit 3?

A. Yes, sir; I am. I have had occasion to go over it several times.

Q. I assume you are the same D. A. Huley whose name appears throughout that opinion and order?

A. Yes, sir; I am the same.

Q. Would you say that you are familiar with the details [fol. 35] of the findings and conclusions of the Commission as expressed in that order?

A. Yes, sir; I think so.

Q. Mr. Huley, did the Railroad Commission of Texas in its findings and conclusions eliminate from the rate base the property value of the Lone Star Gas Company in relation to its public service property certain gas wells of the company, gas leaseholds, and other property in what is known as the Petrolia field?

A. Yes, sir; they did.

Q. In what amount?

A. The actual cost of the gas wells, leases, pipe lines, etc., to the Lone Star Gas Company as carried in the Petrolia field in the amount of \$687,781.13. That was the cost at December 31, 1931.

Q. Do you have that amount subdivided as between leaseholds, wells, and other property?

A. Yes, sir. That amount is divided as follows: Gas rights, \$347,922.91; gas wells, \$137,689.06; pipe lines, \$190,205.73; regulating and measuring stations, \$6,503.99; buildings, \$5,459.44; the total being \$687,781.13.

Q. When you speak of gas rights, Mr. Hulcy, what do you mean? Explain it to the jury.

A. Gas rights, in this particular case, is the cost to the company for the right to explore and to develop and withdraw the gas located under certain lands, and this amount is the cash cost to the company for those rights in the Petrolia field.

[fol. 36] Q. Where is the Petrolia field located, Mr. Hulcy?

A. The Petrolia field is, I would say, twenty to twenty-five miles south of the Oklahoma line, east of Wichita Falls.

Q. And in what county?

A. In Clay County, Texas.

Q. Now, referring to the Commission's order and opinion, in the findings and conclusions therein stated did the Commission eliminate actual operating expenses of the company incurred for the year 1931 in any amount?

A. Yes, sir; they did. For the year 1931 the Commission eliminated operating expenses in the amount of \$217,884.05.

Q. Will you please give a detail of the elimination of operating expenses by the Commission?

A. All right. The first item is management fees and expenses, in the amount of \$91,375.38. It is set out very [fol. 37] clearly and discussed on pages 9-11 of the printed opinion and order, where no allowance whatever was made for management fees and expenses. The next item is where the Commission eliminates \$140,090.23 from cancelled and surrendered leases. The actual amount incurred for the twelve months ending December 31, 1931, reflected by the books of the company, was \$239,230.96. The Commission finds and allows for the same accounting period an amount of \$99,140.73, thereby making a difference of \$140,090.23, that it eliminated from the operating expenses of the company for that accounting period. That is \$99,140.73 as found by the Commission, which was based on the five year period ended December 31, 1931, and as shown on page 12 of the opinion and order. The next item, the Commission adds to the actual operating expenses for that accounting period, dry hole expense in the amount of \$13,581.56. The actual amount as reflected by the books of the company for the twelve month period ended December 31, 1931, was \$65,871.56. The Commission finds and allows on a five year

average an amount of \$79,453.12, and that is shown on page 12 of the printed opinion and order. Those three items make a total of \$217,884.05 that was eliminated from the operating expenses of the company for the year 1931. [fol. 38] Q. Now this elimination of \$217,884.05 for the calendar year of 1931 represented an elimination of cash actually expended by the company?

A. Yes, it did. When I say cash actually expended, of course, on the cancelled and surrendered leases it was writing off of property that was paid for in cash.

Q. In respect of the gas wells, gas leaseholds, gas rights and other property in the Petrolia field which was eliminated by the Railroad Commission in its opinion and order, and in the amount of \$687,781.13, did that figure represent an actual cash cost to the company for that property?

A. Yes, it did.

Q. Was all of that property used and useful in the public service operations of the Lone Star Gas Company as of December 31, 1931, as of the date of the hearing before the Railroad Commission of Texas, and as of September 13, 1933?

A. It was.

Q. Mr. Hulcy, what has been the experience of the company in relation to the trend of its gross and net revenues for the calendar years of 1931, 1932 and 1933?

A. The trend of both gross and net has been downward.

Q. Did you testify before the Railroad Commission of Texas in Gas Utilities Docket No. 75, relating to the actual gross and net revenues of the Lone Star Gas Company, arising from its public service operations for the calendar year of 1931, the calendar year of 1932 and the twelve months ended April 30, 1933?

[fol. 39] A. I did.

Q. And did the actual experience of the company for those accounting periods reflect a decline in both gross and net revenues?

A. Yes, they did.

Q. Mr. Hulcy, have you prepared an exhibit, using the revenues of the Lone Star Gas Company as adjusted by the Commission and the actual expenses of the company for the calendar year of 1932, giving effect to the application of the Commission's rate base and the Commission's depreciation allowance?

A. Yes.

Q. Have you also prepared an exhibit covering the 12 months period ended June 30, 1933, giving effect to the adjusted revenues based on the rate prescribed by the Commission of 32 cents, the actual operating expenses as reflected by the company's books, depreciation and depletion allowances as calculated by the Commission and the rate base as determined by the Commission?

A. Yes, I have; the one exhibit includes both of those accounting periods.

Q. It includes both accounting periods; and is this the exhibit which you have prepared?

A. Yes, it is.

Q. It being styled on the title cover, "Lone Star Gas Company, Public Service Operations; Statement of Revenues, Expenses and Amount Available for Return, based on 32 cent Domestic Gate Rate, Actual Operating Expenses [fol. 40] as reflected by Company's Books, Depreciation and Depletion Allowances calculated by Commission, Rate Base as determined by Commission, for Periods shown Below: Twelve months ended December 31, 1932, and twelve months ended June 30, 1933"?

A. It is.

Q. We offer the Exhibit and statement so identified by the witness in evidence.

* * * * *

(Thereupon the document above referred to was marked as Defendant's Exhibit No. 4.)

* * * * *

[fol. 41] Q. Mr. Huley, have you prepared an exhibit, showing the revenues, expenses and amount available for depreciation and return on the cost of the public service property of the Lone Star Gas Company for the twelve months ended December 31, 1931?

A. Yes, I have.

Q. Is this the statement to which you refer, same being styled on the title cover, "Lone Star Gas Company, public service operations, amount available for depreciation and return on rate base for twelve months ended December 31, 1931"?

A. It is.

Q. We offer the statement so identified by the witness in evidence; and that would be, I assume, Exhibit No. 5.

(Thereupon, the document above referred to was marked as Defendant's Exhibit No. 5.)

Q. Mr. Hulcy, have you likewise prepared a statement in exhibit form, covering the revenues, expenses and amount available for depreciation and return on Lone Star Gas [fol. 42] Company's public service properties for the twelve months ended December 31, 1932?

A. I have.

Q. Is this the statement to which you refer, the same being styled on the title cover: "Lone Star Gas Company, public service operations, amount available for depreciation and return on rate base for twelve months ended December 31, 1932"?

A. It is.

Q. We offer the statement so identified by the witness in evidence. That will be Exhibit No. 6, I take it.

(Thereupon the document above referred to was marked as Defendant's Exhibit No. 6.)

Q. Mr. Hulcy, have you also prepared a statement in form for an exhibit to be presented in this case, covering the public service revenues, expenses and amount available for depreciation and return for the twelve months ended June 30, 1933?

A. Yes, I have.

Q. Is this the statement to which you have referred, the same being styled on the title cover, "Lone Star Gas Company, Public service operations, amount available for depreciation and return on rate base, for twelve months ended June 30, 1933"?

A. It is.

Q. We offer the statement so identified by the witness [fol. 43] in evidence; and I presume it will be No. 7.

(Thereupon the document above referred to was marked as Defendant's Exhibit No. 7.)

Q. Mr. Hulcy, it is noted in connection with Exhibits 5, 6 and 7 that as the so-called rate base you have used the actual cost of the public service properties, as reflected by the books, for the several periods?

A. Yes, I have.

Q. You are not standing sponsor for the adoption of the actual cost as reflected by the books, for a rate base?

A. No, sir.

Q. And you do not so intend in connection with this exhibit or similar exhibits for other accounting periods?

A. No, sir; this is merely the actual cost of the public service properties as reflected by the books of the company at the various dates stated.

Q. Have you prepared a statement of the public service revenues, expenses and amount available for depreciation and return on the Lone Star Gas Company's property for the twelve months ended December 31, 1933?

A. Yes, I have.

Q. Is this the statement you have prepared, being styled on the title cover, "Lone Star Gas Company, public service operations, amount available for depreciation and return [fol. 44] on rate base for twelve months ended December 31, 1933?"

A. It is.

Q. We offer the statement so identified by the witness in evidence; and it will be No. 8, I believe.

(Thereupon the document above referred to was marked as Defendant's Exhibit No. 8.)

Q. Mr. Hulcy, have you prepared an accounting statement covering the revenues, expenses and amount available for depreciation and return on Lone Star Gas Company's public service property for the twelve months ended March 31, 1934?

A. Yes, I have.

Q. Is this the statement which you have prepared, the same being styled on the title cover, "Lone Star Gas Company, public service operations, amount available for depreciation and return on rate base for twelve months ended March 31, 1934"?

A. It is.

Q. We offer the statement so identified by the witness in evidence; and I presume it will be No. 9.

(Thereupon the document above referred to was marked as Defendant's Exhibit No. 9.)

Q. Mr. Hulcy, have you prepared a statement covering the public service revenues, expenses and amount available [fol. 45] for depreciation and return on Lone Star Gas Company's public service property for the twelve months ended April 30, 1934?

A. Yes, I have.

Q. Is this the statement to which you refer, the same being styled on the title cover, "Lone Star Gas Company, public service operations, amount available for depreciation and return on rate base, for twelve months ended April 30, 1934"?

A. It is.

Q. We offer in evidence the statement so identified by the witness.

(Thereupon the document above referred to was marked as Defendant's Exhibit No. 10.)

Q. Mr. Hulcy, have you prepared a statement covering the detail of the operating expenses of the Lone Star Gas Company for the calendar years of 1931, 1932 and 1933 and the twelve months ended March 31, 1934?

A. Yes, and in addition to that, also for the period the twelve months ended June 30, 1933, which is included.

Q. Is this the statement to which you refer, being styled on the title cover, "Lone Star Gas Company, Statement showing detail of operating expenses for periods shown below: Twelve months ended December 31, 1931; December 31, 1932; June 30, 1933; December 31, 1933; and March 31, 1934"?

A. It is.

[fols. 46-47] Q. We offer the statement so identified by the witness in evidence as Exhibit No. 11.

(Thereupon the document above referred to was marked as Defendant's Exhibit No. 11.)

Q. Mr. Hulcy, have you also prepared a statement showing the detail of the operating expenses of the Lone Star Gas Company in relation to its public service properties, for the twelve months ended April 30, 1934?

A. I have.

Q. Is this the statement to which you have referred, the same being styled on its title cover, "Lone Star Gas Company, statement showing detail of operating expenses, twelve months ended April 30, 1934?"

A. It is.

Q. We offer the statement so identified by the witness in evidence, as Exhibit No. 12.

(Thereupon the document above referred to was marked as Defendant's Exhibit No. 12.)

* * * * *

[fol. 48] Q. Mr. Huley, have you prepared a detailed accounting exhibit giving effect to the several findings by the Commission—I refer to the Railroad Commission of Texas—in its order and opinion dated September 13, 1933, and based upon both the 40 and the 32-cent domestic gate rate?

A. Yes, sir; I have.

Q. Is this the statement or exhibit to which you refer, Mr. Huley, it being styled on the title cover, "Lone Star Gas Company, Public Service Operations. Accounting Schedules based on Findings by Railroad Commission of Texas and set out in their Opinion and Order dated September 13, 1933."?

A. It is.

Mr. Griffith: We offer the statement so identified by the witness in evidence.

(Thereupon the document above referred to was marked as Defendant's Exhibit No. 13.)

Q. Mr. Huley, have you prepared a statement of the revenues and expenses of the Lone Star Gas Company in relation to its public service property—showing the revenues, expenses, and amount available for return, after giving effect to the 32-cent domestic gate rate prescribed by the order of the Railroad Commission of Texas, of date September 13, 1933, basing your calculations upon the Commission's rate base, the Commission's depreciation and depletion allowance, but with the actual operating expenses incurred by the Company for the accounting period ended April 30, 1934?

A. Yes, sir; I have; only the exhibit shows, in addition to the 32-cent gate rate, it also shows the 40-cent gate rate, on the rate base as determined by the Commission; and one other calculation to show the same information for a 32-cent gate rate, but the rate base being the actual cost of public service property as reflected by the books of the Company.

Q. Is this the statement concerning which you have just testified, it being styled on the title cover, "Lone Star Gas Company, Public Service Operations, Statement of Revenues, Expenses, and Amount Available for Return. Cal-

culations Based on Actual Operating Expenses as Reflected by Company's Books. Twelve Months Ended April 30th, 1934"?

A. It is.

Mr. Griffith: We offer the statement so identified by the witness in evidence.

(Thereupon the document above referred to was marked as Defendant's Exhibit No. 14.)

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[fol. 51] Examination by Mr. Fitzhugh:

Q. Mr. Huley, where you have exhibits that purport to [fol. 52] show operating revenues or operating expenses for any period of time, does that cover the operations of the Company both in Oklahoma and in Texas?

A. Yes, sir; it does.

Q. And does it include also the operations of the Company both in intra-state and in interstate commerce, if there be any such operation?

A. Yes, sir; it does. It covers the entire operations of the Lone Star Gas Company's public service properties, and operations. There is no distinction made at all.

Q. And where you show a rate base in some instances, it is a rate base taken from the order of the Railroad Commission, is it not?

A. That is quite true, yes, sir.

Q. And in others, where you show a book cost, or the worth of property as of any particular date, as of the books, have you taken the figure for that date as it may have been introduced in evidence before the Commission at its hearing, or is that one that you have calculated or taken from the books for this hearing, and which has not appeared in the evidence heretofore?

A. No; I think the December 31, 1931 and the December 31, 1932 exhibits were sponsored by me in the prior or former hearing held before the Railroad Commission, and I think you will find the actual cost, as reflected by the books, of the public service property, to be the same in those exhibits, as well as these.

[fols. 53-54] Q. You have taken the costs as shown on the books without any corrections?

A. Yes, sir; without any corrections,—that is of the public service property.

Q. In no instances where you have taken the cost of the Company's properties as per the books will that book cost reflect any accrued depreciation that the properties have suffered?

A. No, sir; it does not. It is the cost to the Company as reflected by its books.

Q. And in no case would that cost as per the books be indicative of the present worth or fair value, as you understand that term ordinarily used?

A. No, sir; the only thing it reflects is the actual cost. I would like to correct the statement made to you, Mr. Fitzhugh, when you inquired about any depreciation deducted. Depreciation has been deducted with reference to automobiles and to drilling tools; they are shown on the statements as net.

Mr. Fitzhugh: That is all that I care to ask at this time, I believe.

[fol. 55] Mr. Fitzhugh: We object to the introduction of the Exhibit marked for identification "Number 4" for the reason that the Exhibit attempts to show Gross Revenues, and by deductions from Gross Revenues is meant Operating Expenses that include the whole operation of the Company, whereas part of the operations of the Company are certainly of business done wholly within the State of Oklahoma, which involves gas produced in Oklahoma and consumed in Oklahoma, whereas in this hearing we are concerned only with the property and business over which the State of Texas may properly assume jurisdiction, and over which the Railroad Commission can validly pass its order.

We object to the showing on the Exhibit of the amounts [fol. 56] available for depreciation and depletion, Federal income tax and return, for the same reasons, because that amount is derived from a study of the whole operations of the Company, rather than of the operations of which Texas has jurisdiction.

We object to the showing of amounts for depreciation and depletion because on inspection we find that those amounts are derived from the findings of the Railroad Commission, whereas the findings of the Railroad Com-

mission are not binding on anybody, or admissible in a hearing de novo for proving any facts.

We object to the showing of amounts available for Federal Income Tax for the same reasons.

We object to the amount shown as available for Return, for the same reasons.

We object to any inclusion in the Exhibit or showing made as to the Rate Base as set out in findings by the Railroad Commission, and the amount shown as rate of return based on that rate base, because that is simply an argument assuming as basic at that time the findings of the Railroad Commission, which are not binding in this procedure, which is a hearing de novo, and because such an argument is an attempt to make an argument from the witness-stand that should properly be made by the lawyers in the case at the conclusion of this trial.

We object to the whole exhibit, because the purpose of [fol. 57] the Exhibit is to argue from the findings of the Railroad Commission, rather than to introduce at this hearing, which is a hearing de novo, the true basic data upon which the Company relies in making out its case.

And we object for the further reason that the Exhibit is introduced for the purpose of showing conclusions and arguments as the compiler has reasoned them out from basic data which is improbable, inexact, and not binding on the plaintiffs.

The Court: * * * the objections are overruled, and the testimony is admitted in evidence.

Mr. Stout: Our objections to the entire business will be more or less the same, and if the Court overrules Number 4, it follows that the rest will be overruled.

The Court: You may have the same objections and exceptions to each of them.

[fol. 58] Mr. Fitzhugh: The plaintiffs object to the introduction of the Exhibit marked for identification purposes "Number 5", for all of the reasons stated heretofore in objecting to Exhibit No. 4, plus these additional reasons: That on the first page inside the cover-sheet of this Exhibit is shown an amount of \$47,776,749.63, said to be the Rate Base, and that is marked as the "Actual Cost of Public Service Property as Reflected by Books"; whereas the cost as shown by the books could not possibly constitute a rate

base for any purpose, it being undepreciated, not representing fair value, and not being determinative of anything.

* * * * *

[fol. 59] Mr. Fitzhugh: This shows on its face that it has something in here that is not a fact and is misleading, in that it states a figure for a rate base which cannot be a rate base.

* * * * *

The Court: The objection is overruled.

Mr. Fitzhugh: We except. The same objections we made to Number 5, Your Honor, will go to all exhibits from 5 to 10 inclusive.

The Court: All right; the objections are overruled.

Mr. Fitzhugh: Particularly do we want to urge the objection to all these exhibits from 4 to 14 inclusive the fact that these exhibits contain the Operating Expenses and Operating Revenues for business done in the State of Oklahoma, [fol. 60] including the business done on gas produced solely in Oklahoma and consumed solely in Oklahoma.

* * * * *

Direct examination continued.

Questions by Mr. Griffith:

Q. Mr. Huley, will you please refer to Defendant's Exhibit No. 4?

A. Yes, sir.

[fol. 61] Q. Throughout Exhibits 4 to 14, which were introduced in evidence on yesterday, there appears the phrase "Public Service Operations." Will you please state to the Court and jury what you mean, intend, and understand by the term "Public Service Operations," or by the term "Public Service Business," in connection with your testimony in explanation of Defendant's Exhibits 4 to 14, inclusive?

A. In addition to the natural gas properties, which are dedicated to public use and public service by the Lone Star Gas Company, they also own and operate natural gasoline plants, and certain oil properties, which are not public service properties and operations, inasmuch as they are not dedicated to public service; and when we refer to "Public

Service Operations" and/or "Public Service Business" in any of these exhibits, or in testimony I am giving, I refer particularly to the natural gas properties which are dedicated to the use of and for public service.

Q. What is the primary business of the defendant Lone Star Gas Company?

A. The primary business of the defendant Lone Star Gas Company is the production, transmission, and sale of gas at wholesale to distribution companies located in certain cities and towns in the States of Oklahoma and Texas.

Q. In addition to its business of producing, purchasing, transporting, and selling at wholesale natural gas, is the Lone Star Gas Company engaged in the retail distribution of gas at any place?

[fol. 62-64] A. Yes, sir; they are at Fort Worth, Texas.

Q. What is the Fort Worth, Texas distribution plant commonly referred to as being?

A. It commonly is referred to as the Lone Star Gas Company, Fort Worth Division—a distribution system operated within that city.

Q. Did the Railroad Commission in its order and opinion, in evidence in this case, consider the property values, or the operating revenues or expenses of the Fort Worth Division?

A. They did not.

Q. The Railroad Commission in Gas Utilities Docket No. 75 was only concerned with the fixation of a rate for gas wholesale at the City gate?

A. That is correct.

Q. In your Exhibits Nos. 4 to 14, inclusive, have you given any consideration whatsoever to the public service properties, revenues, and expenses, of the Lone Star Gas Company in so far as the retail distribution of gas is concerned by the Fort Worth Division of the Company?

A. I have not.

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[fol. 65] Q. Now, those gross revenues are what the revenues would have been for the twelve months period ended December 31, 1932, if the city gate rate of thirty-two cents for domestic gas as determined by the Railroad Commission had been in effect?

A. That is quite true, yes, sir. That is giving effect to the thirty-two cent domestic gate rate.

Q. What is included in Miscellaneous Operating Revenues?

A. Miscellaneous Operating Revenues is some gas that is handled by the Lone Star Gas Company in the West Texas field. That accounts for practically all of that.

Q. What are other Non-Operating Revenues?

A. Other Non-operating Revenues are rentals—principally that—and other miscellaneous income, less the miscellaneous non-operating deductions. The twelve thousand dollars shown is a net figure for that period, or, rather, the difference between the revenues and the expenses in connection with the non-operating section, and when I say “non-operating”, that is other than the natural gas business, which would include rentals and charges and credits of that kind.

Q. Proceed, Mr. Huley, with an explanation of the deduction shown from gross revenues for the twelve months period ended December 31, 1932.

A. The deductions shown here—that is, from gross revenues—are the actual amounts as reflected by the company's books for this twelve months period, and as follows: Gas purchased, \$1,177,334.48; that is the actual amount paid by the company during this accounting period for gas purchased from others. Production system expense in the [fol. 66] amount of \$82,923.07; that is the cost to the company of operating its own production system property—that is, the gas wells, all expense in connection with them up to the point where the gas is delivered from the wells into the gathering system. The next item is gathering system expense in the amount of \$135,110.30; that classification of expense covers all charges incurred by the company from the point of delivery at the mouth of the well until such time as it is turned into what we term the transmission lines; it covers the well lines going to the individual lines from the major transmission or major gathering lines. The next item being transmission system expense in the amount of \$454,086.37; that amount covers the entire cost of operating the transmission system pipe lines from such point where the gas is received from the gathering system until it is finally delivered to a customer located along those lines or to a city distribution system. Compressor Station Expense—

Q. By the way, explain what a compressor station is, Mr. Huley, and its function.

A. A compressor station is a plant located in some cases in the field, in other cases along main lines. The operation of this plant is to pick gas up at a lower pressure and boost the pressure to where the gas would be carried along—that is, the transmission lines—at sufficient pressure to deliver it at far removed points. I am sure that this jury or all of us could understand that gas is delivered at vary- [fol. 67] ing pressures; from some fields, perhaps the main transmission line passing near by carries a line pressure of 350 or 400 pounds; perhaps the pressure in that particular field from which we are taking gas—that is, the well pressure I mean—might be perhaps as low as one hundred pounds. Therefore, before we are able to take or withdraw any gas from that field it is necessary that it be picked up to a pressure equal to the main line pressure, else it could not feed into the line. Now, the Lone Star Gas Company operates—I have forgotten the exact number, but somewhere around twenty of those stations over its entire system, and this classification of expense covers all charges incurred in the operation of those compressor stations.

Q. For the twelve months period ended December 31, 1932, compressor station expense as reflected by Defendant's Exhibit 4 was what amount?

A. \$358,402.61. The next item covers new business expense, in the amount of \$87,528.94. New business expense covers the cost to the company of all advertising; it covers also the cost of the operation of our Industrial Gas Department, I might add in that connection that the Lone Star Gas Company does maintain an Industrial Department; their duties are in connection with industrial gas sales; their time is made available and they do work with all of the distribution companies to which Lone Star Gas Company sells gas, inasmuch as the Lone Star Gas Company participates in any sale that is made by any distribution [fol. 68] company that receives its gas from the Lone Star Gas Company. Now, those two items—that is, advertising and the Industrial Gas Department—are the principal items appearing in this classification of expense, and, as stated before, in the amount of \$87,528.94 for the twelve months ended December 31, 1932. The next item appearing as a deduction is General Expenses, in the amount of \$940,748.36. This amount covers all of the charges incurred by the com-

pany for general administrative salaries, all other general salaries, general office rents, general office supplies and expenses, stationery and printing, regulatory commission expenses.

Q. What do you mean by "regulatory commission expenses", Mr. Huley?

A. Regulatory commission expenses cover expenses to the company in connection with hearings before any regulatory body, particularly with reference to rates.

Q. And would it cover the expense to which the company was put before the Railroad Commission of Texas in Gas Utilities Docket No. 75?

A. Yes, sir.

Q. Would it as well cover expenses in connection with this hearing?

A. Yes, sir; it does. In addition to the items that I have just mentioned, it also covers the cost of operating the company's telephone system. The Lone Star owns and operates a telephone system along almost all of its pipe line [fol. 69] system, that well attendants may report in to the central office concerning pressures, leakages, breaks in the line, and all those things, and the cost of operating that telephone system is a part of the general expense.

Q. The company is not engaged in the general telephone business, Mr. Huley?

A. No, sir; they are not.

Q. In other words, this telephone system is one used in connection with its own operations?

A. That is quite true, yes, sir. The next item appearing in the classified section deduction from gross revenue is Uncollectible Bills, in the amount of \$5,399.35. Well, that is just some bills that we didn't collect, we failed to get our money from the sale of gas. The next item is Taxes, other than Federal, in the amount of \$343,693.30. As stated, that amount covers all of the taxes paid by the company for this accounting period, other than Federal income taxes—that is, ad valorem taxes and any special taxes which we might have had to pay. The next item is Cancelled and Surrendered Leases, in the amount of \$255,829.03. The Lone Star owns certain undeveloped leases; I mean by that prospective gas leases. Naturally, at different times certain of those leases are deemed to be perhaps worthless; that is by adjacent development work and other general information pertaining to that particular district in which the

leases are located, or else they expired by their own terms, [fol. 70] and it becomes necessary to cancel and surrender those particular leases, and this amount represents the actual number and amount of leases that were cancelled and surrendered and written off the books as an asset during this accounting period; I mean by that December 31, 1932.

Q. You said it represents the actual number of leases. You mean, rather, the actual cost of the leases as reflected by the books?

A. That is quite true, yes, sir. The actual number and cost, it would be.

Q. Making a total of deductions from gross revenues in the amount of \$3,841,055.81. What amount do you show as available for depreciation, depletion, Federal income tax and return?

A. An amount of \$3,670,206.69.

Q. Now, what do you mean by "depreciation", Mr. Huley, as used in Exhibits 4 to 14, inclusive?

A. Most all of my exhibits are carried as depreciation and depletion. Depreciation is intended to cover an amount that will take care of the actual cost of replacements necessary and that will write off the property or the asset covered and upon which depreciation is claimed over the estimated life of the particular property. The word "depletion" pertains and applies to gas reserves; I mean by that that when the company withdraws by production and uses the gas from the ground or from the reserve which is owned by the company, naturally that particular asset has suffered depletion, and the allowance made for that is to [fol. 71] write off from the expected period or life of such reserves an amount which will return to the company at the end of that period an amount equal to the cost of such reserves. I think generally, Mr. Griffith, that is about what I had in mind with reference to depreciation and depletion.

Q. Have you stated the amount that is available for depreciation, depletion, Federal income taxes and return for the period ended December 31, 1932?

A. Yes, sir; I stated that into the record, in the amount of \$3,670,206.69.

Q. Now, you have deducted from that amount for depreciation and depletion \$987,598.35?

A. Yes, sir; I have.

Q. Was that the actual amount which was set up on the company's books for debit and credit for the twelve months ended December 31, 1932?

A. No, sir; it is not.

Q. From what source have you taken the figure which you have used—that is the nine hundred and eighty-seven thousand dollars plus?

A. That amount is based on the findings by the Railroad Commission and as set out in their opinion and order dated September 13, 1933.

Q. After making the deduction for depreciation and depletion, what amount do you have available for Federal income tax and return?

A. \$2,682,608.34.

Q. Now, the Federal income tax applicable to such an amount shows to be \$208,202.84?

[fol. 72] A. Yes, sir; that is true.

Q. That is based upon what, Mr. Hulcy?

A. That is based upon the amount available for Federal income tax, less the total interest charges paid by the company for that particular period, the remainder being calculated at a rate of 13.75 per cent, which was the prevailing rate during the year 1932.

Q. And which would have been payable by the company, assuming that its income had been changed to the thirty-two cent rate prescribed by the Commission and to the depreciation and depletion allowance prescribed by the Commission?

A. Yes, sir; that is quite true. That is the calculated income tax based upon the amount of net earnings available for such purposes.

Q. Now, what was the amount available for return for the twelve months ended December 31, 1932, as shown by Exhibit 4?

A. The amount available for return was \$2,474,405.50.

Q. The next item appearing here is that of rate base, in the amount of \$46,520,137.06?

A. Yes, sir; that is correct.

Q. From what source did you get the rate base as used in this exhibit?

A. That is the amount found by the Commission—I mean by the Railroad Commission—at December 31, 1932, and as set out on page 79 of their printed opinion and order dated September 13, 1933.

Q. And which opinion and order is in evidence here, labeled Defendant's Exhibit 3?

A. Yes, sir; that is correct.

[fol. 73] Q. Now, Mr. Hulcy, having taken the rate base determined by the Commission, and the amount available for return, what per cent do we find is available for return on the rate base so determined by the Commission for the twelve months ended December 31, 1931?

A. 5.32 per cent.

Q. Now, Mr. Hulcy, without going into detail on page 2 of Defendant's Exhibit 4, relative to the twelve months period ended June 30, 1933, I will ask you whether all of the explanations which you have given in respect to the several operating expenses, the gross revenues, and so forth, of the Company, would be equally applicable to the twelve months period ended June 30, 1933.

A. Yes, sir, they would, with the exception of the depreciation and depletion allowances. In the statement covering twelve months ended December 31, 1932, the Railroad Commission made specific allowances as at that date, or for this accounting period, and they are the exact amounts used in this exhibit for the year 1932. However, for the twelve months ended June. Following their same method of determining the rate base which was used here, we do find an amount for depreciation which is not exactly the same figure as quoted by the Commission, but does follow their procedure all the way through. I thought it well to make that explanation.

Q. For the twelve months ended June 30, 1933, applying the amount available for return to the rate base as determined [fol. 74] mined by the Commission, what does your Exhibit 4 reflect as the amount available for return for that period?

A. The amount available for return?

Q. Expressed as a percentage.

A. 5.01 per cent.

Q. Now, Mr. Hulcy, please refer to Defendant's Exhibit 5.

A. All right.

Q. Inside the title cover of Defendant's Exhibit 5 do you show a summary of this exhibit?

A. I do.

Q. By the heading "Rate Base" you are not adopting the figure of \$47,776,749.63 actually as a rate base.

A. No, sir, I am just quoting that amount as being the

actual cost of the Public Service Property as reflected by the Company's books at December 31, 1931.

Q. Now, Mr. Hulcy, on the last page of Defendant's Exhibit 5 do you show a detail of the actual cost of the Public Service Property of the Lone Star Gas Company as reflected by its Books at December 31, 1931?

A. Yes, sir, I do.

Q. Will you please explain that in detail—the classifications of property appearing upon that page?

A. The property—that is, the Public Service Property owned and operated by Lone Star Gas Company at December 31, 1931, is classified on this page, and is shown as follows: Undistributed Intangible Property in the amount of \$6,338,000.00, which is shown as Investment Per Books. [fol. 75] The next column, having the heading of Completed Construction; the third money column, being the total of columns Nos. 1 and 2, for the total of the Undistributed Intangible Property, is brought over to the Total column in the amount of \$6,338,000.00. The fourth money column, being headed Revaluation. By that I mean the result of an appraisal that was made of the Public Service Properties of the Lone Star Gas Company, the results of which were placed on the Company's books; however, set out so that there never would be any question on how much that sum amounted to—or, in other words, that we would not ever get any revaluation mixed up with the actual cash cost of the property. So for the reason or for the purpose of preparing this exhibit, which was to arrive at the actual cost as reflected by the books at December 31, 1931, we set out the revaluation and deducted it from the total, therefore,—the difference being the actual cost as at that date. So in the matter of the Undistributed Intangible Capital which was set out from the appraisal, the entire amount is deducted, and leaves nothing at December 31, 1931, as represented by actual cost. The next property account being Production System Property—Gas; Gas Leases, Rights, and Lands in Fee, shown in the amount of \$1,369,744.17. The next column covering Completed Construction—by that we mean that certain leases had been purchased during the month of [fol. 76] December which had not been closed from the job order or authorization account into the permanent lease investment. So; in order that we may have the total investment for that classification of property at December 31, 1931, that amount is added to the amount carried in the

permanent investment account, making a total of \$1,388,907.88. There is no deduction for revaluation, for the reason that any revaluation was not set up against leases. Therefore, the total amount being the actual cash cost to the Company, and is so reflected in the last column appearing on the sheet. The next item is Gas Farms. By that we mean gas producing leaseholds, which includes the cost of the lease and the cost of the wells located thereon which have been charged to the Investment Account. The ledger or investment records show an amount of \$5,127,856.43. Likewise, there was an amount of \$5,681.80 in the construction ledgers as at that date, or making a total investment as reflected by the books of \$5,133,538.23. However, included in that amount was \$1,632,694.87, which was revaluation, or the effect given to an appraisal which had been set up. That amount, when deducted from the total investment, leaves \$3,500,843.36 as representing the actual cash cost to the Company and as reflected by its books at December 31, 1931.

The Court: Now, Mr. Witness, I would like to ask you a question right here.

A. Yes, sir.

[fol. 77] The Court: As I understand your testimony, the difference between these two items you have just testified about is where you show gas leases, rights and lands, in fact, that is stuff that is not now producing gas, or was not at the time?

A. At December 31st, that is the date given there.

The Court: Gas Farms is those leases, and so forth, on which or which were at that time actually producing gas?

A. Yes, sir.

The Court: All right.

A. Yes, sir, that is the division between the two.

Mr. Griffith:

Q. In other words, one might be styled "Developed" and the other "Undeveloped"?

A. Yes, sir; yes, sir. The Total of the Production System Property—Gas, at December 31, 1931, reflected by its books, is \$6,497,600.60; Completed Construction of \$24,845.51, or a Total Investment, as reflected by the books at December 31st, of \$6,533,446.11; and included in that amount is \$1,632,695.87, covering Revaluation, or the results of an appraisal, leaving for Production System Property, \$4,889,751.24, as being the actual cash cost to the Company, and as reflected

by its books at December 31, 1931. The next classification of property is shown as Gathering and Transmission System Property. The Investment records reflected at December 31, 1931, a total amount of \$50,233,511.94, and as Completed Construction for that classification of property \$31,516.13, or a total of \$50,265,028.07. The statement also shows Revaluation in the amount of \$13,848,567.57; and that amount, when deducted from the total investment as shown by the books, leaves \$36,416,460.50 as being the actual cash cost to the Company, and reflected by its books at December 31, 1931. The next classification of property is Compressor Station Property, a Total Investment in the amount of \$6,569,248.10, and in Completed Construction account \$1,661.61, making a total of \$6,570,909.71; and Revaluation in the amount of \$1,509,894.51; and that amount deducted from the Total Investment leaves \$5,061,015.20 as being the actual cost reflected by the Company's books at December 31, 1931. And under the general heading of Other Public Service Property we find the following investments: Automotive Equipment—Net. It might be well to explain just what we mean by "Net". Automobiles, of which the Lone Star Gas Company owns and operates quite a number of them, are handled through the records of the Company just as if they belonged to an outsider, and they are handled on a per diem rate—that is, for the use of such automobiles so much per day or so much per mile. We found that it was absolutely necessary to do that in order that we did not have great differences in charges made for the same class of work. We used to pro rate the total expense of each particular automobile over the amount of work actually performed by [fol. 79] that particular automobile in one month. In some cases we had an automobile that had been placed in the shop for general repairs. Perhaps it was only operated for four or five days. The cost of making those repairs to the automobile perhaps was a hundred dollars. Well, when we would pro rate that, that amount over the work actually performed, very likely it resulted in a per diem charge of twenty to twenty-five dollars a day; well, the following month the automobile was in good shape, the only expense incurred was the gasoline and oil. Perhaps it worked a full thirty days and with a total charge of sixty dollars for the month, which resulted in a charge of two dollars a day for the same class of work that the job last month stood twenty-five dollars a day for. So now we handle our automobiles, as I say,

on a per diem basis—that is, that the same charge is made every day, regardless of how much the expense amounts to. The depreciation on the automobiles is included in and made a part of this per diem charge. So it means that in so far as the depreciation actually incurred and charged out on these particular automobiles has actually been charged to operating expenses, or to other investment accounts, all depending upon which service the automobile was used for. So, inasmuch as that has been done, it is only right that the total automotive equipment be shown and the net depreciation reserve deducted from that amount; and that is what I mean when I quote the net figure, which is the gross investment [fols. 80-83] less the accrued depreciation. That amount is shown to be \$212,371.61. Also, in the Completed Construction account there was an item of \$2,317.00 that covered the cost of automobiles which had been paid for but which had not been transferred to the permanent automobile investment account, making a total of \$214,688.61; that amount includes \$124,838.78 which was set up as a Revaluation, and that amount, when deducted from the Total Investment, leaves a depreciated value of automobiles of \$89,849.83 at December 31, 1931. The next item of property is shown as the Dallas Machine Shop. That is a general shop that is owned and operated by the Company, and located in Dallas, and it performs work for the entire system; that amount being \$182,326.48; there being no Completed Construction, that amount is carried forward to the Total column. However, included in that amount is \$43,951.37 of Revaluation which has been placed on the books as the result of an appraisal that has been made.

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A. The Revaluation when deducted from the Total Investment leaves \$138,375.11 as being the actual cost to the Company and reflected by its books at December 31, 1931.

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[fol. 84] A. The next item appearing under the section of other public service property is drill tools, net. The same explanation that I made with reference to the automotive equipment net—that is the cost less the accrued depreciation, applies to the drill tools. That amount is \$43,489.11. There being no drill tools in the completed con-

struction account, that amount is carried forward to the total column in the same amount. There being no revaluation [fol. 85] set up on the books, the \$43,489.11 is shown as being the actual cost to the company less the accrued depreciation at December 31, 1931.

The next item is gas connections, in the amount of \$15,050.78. Gas connections covers the property used by the company in making sales along its main lines, that is meters and connections and other equipment used for rendering service to main line consumers. That amount also carries forward across the entire page and is the actual cost as reflected by the company's books at December 31, 1931, of that class of investment.

The next item is general office building and equipment in the amount of \$611,234.02. There being no completed construction at December 31, 1931, for that classification of investment, the total amount is carried forward to the total column in the same amount. However, that amount does include as revaluation \$142,461.23 and when deducted from the total leaves \$468,772.79 as being the cost to the company and reflected by its books at December 31, 1931.

The next item, being general office furniture and fixtures in the amount of \$261,104.71; there being no completed construction at December 31, 1931, that amount is carried to the total column in the same amount. However, that total does include \$62,696.70 of revaluation which was set up as a result of an appraisal, and that amount when deducted from the total leaves \$198,408.01 as being the actual cash cost [fol. 86] reflected by the company's books at December 31, 1931.

The next item, being real estate, in the amount of \$161,577.90; that amount is carried to the total column. However, included in that amount is \$79,449.47 styled revaluation and that amount when deducted from the total leaves \$82,128.43 as representing the actual cash cost to the company and reflected by its books at December 31, 1931.

The next item being telegraph and telephone system, in the amount of \$987,570.72, that amount being shown in the third column, or the total column. Included in that amount is \$626,729.49 of revaluation and that amount when deducted from the total leaves \$360,841.23 as being the actual cash cost to the company and as reflected by its books at December 31, 1931.

The next item being tools and construction equipment in the amount of \$12,607.40; there being no completed construction and no revaluation set up against that particular class of asset, that amount is shown in the last column which is the cost to the company at December 31, 1931, and as reflected by its books at that date.

The total of the Other Public Service Property, being the investment as per the books, of \$2,487,332.73; the total for completed construction being \$2,317.00; and the total of the first two columns being \$2,489,649.73. The total revaluation for that particular classification of assets being \$1,080,127.04, and that amount when deducted from the total leaves \$1,409,522.69 as being the actual cash cost as reflected by the company's books at December 31, 1931. Then the grand total of the public service property at December 31, 1931, is shown, investment per books, of \$72,125,693.37. The total of completed construction in the amount of \$60,340.25. The total of the first two columns being \$72,186,033.62, and included in that amount and carried as revaluation is \$24,409,283.99 and that amount when deducted from the total leaves \$47,776,749.63 as being the actual cash cost of the public service property of Lone Star Gas Company at December 31, 1931, reflected by its books as at that date.

Mr. Griffith: And which figure is carried forward to the summary on page 2 of Defendant's Exhibit 5?

A. Yes, that is correct. It is carried forward in the total amount.

* * * * *

[fol. 89] Q. Now, Mr. Hulcy, refer to the page of Defendant's Exhibit 5 where you show the revenues, expenses and amount available for depreciation and return for the twelve months ended December 31, 1931—and gentlemen of the jury—this is the third sheet of this exhibit, counting the title cover.

* * * * *

Q. Yes. Now do you on that page show the actual operating revenues of the Lone Star Gas Company for the twelve months ended December 31, 1931?

A. I do, sir.

Q. That is true, both in relation to gas sales and miscellaneous operating revenues?

A. Yes.

Q. And showing a total of operating revenues of \$9,267,270.80?

A. That is correct.

Q. That is based upon the collection by Lone Star Gas Company of 40 cents for domestic gas wholesale at the city gate?

A. That is true.

Q. In other words, it is based upon what the company actually did?

A. That is right.

Q. And without reference to what the Railroad Commission [fol. 90] prescribed in respect of the 32 cent rate?

A. This statement has no reference at all to any findings by the Railroad Commission, either with reference to gas sales or to operating expenses. It is the actual revenues and the actual expenses, as reflected by the Company's books.

Q. Give a brief explanation of the figures appearing on that page relating to operating expenses, operating earnings, non-operating revenues, gross income, non-operating income deductions, federal income tax and amount available for depreciation and return.

A. Operating expenses are shown in the total amount of \$4,394,710.63, and covers gas purchased, production system expense, gathering system expense, transmission system expense, compressor station expense, new business expense, general expense, uncollectible bills, taxes other than federal, and cancelled and surrendered leases, all of those items making a total in the amount I have just quoted. That amount when deducted from the total operating revenues leaves as operating earnings \$4,872,560.17. Non-operating revenue for that accounting period, which is made up largely of rentals and other like items, amounting to \$35,464.07, leaving as gross income \$4,908,024.24, and shown under non-operating revenue deductions is an allowance for federal income tax, this amount being a calculation at the prevailing rate, which was 12 per cent of the net profit after depreciation, in the amount of \$302,302.41. That amount when deducted from the gross income leaves an [fol. 91] amount of \$4,605,721.83, as being available for

both depreciation and return, and that amount is transferred to the second sheet in the exhibit, or summary sheet.

Mr. Griffith:

Q. Now Mr. Hulcy, in connection with your explanation of Defendant's Exhibit 4, you said that you computed income tax for the calendar year of 1932 and for the twelve months ended June 30, 1933, at the rate of 13¾ per cent?

A. Yes, I did.

Q. And you have now testified that in connection with your Exhibit 5 you calculated the federal income tax on the basis of 12 per cent?

[fols. 92-93] A. Yes, that is correct.

Q. I will ask you if Congress increased the federal income tax from 12 per cent to 13¾ per cent?

A. Yes, they did, and that was effective as of January 1, 1932.

Q. And is it still in effect?

A. Yes, it is.

[fol. 94] Q. Mr. Hulcy, referring to the second page of Exhibit 6, we find a Summary of the Exhibit showing the actual operations of the Lone Star Gas Company in relation to its public service business for the twelve months ended December 31, 1932?

A. Yes, sir; we do, in the amount of \$4,658,506.48.

Q. Now, the actual cost of the public service property of the Company as reflected by its books as of December 31, 1932 was what figure?

A. \$50,034,431.70.

Q. In the same manner that you set out the Investment per Books, Completed Construction, Revaluation, and Cost in your Exhibit No. 5, do you set out the public service property at the close of this Exhibit?

A. Yes, sir; I did.

Q. Now, it would appear from an examination of Defendant's Exhibit No. 5, and at the same time from an examination of Defendant's Exhibit No. 6, that the cost of the public service property had increased at December 31, 1932 over the cost of December 31, 1931?

A. Yes, sir; that is correct.

Q. To what is that increase in cost due?

A. The increase in cost is due to added property. The added property is made up largely of the property acquired [fol. 95] by the Lone Star Gas Company as of January 1, 1932 from the Meridian Gas Company, which included gas producing properties, gathering system properties, transmission system properties, and some telephone lines, in the amount of \$1,338,406.21. Also, as of October 1, 1932, the Lone Star Gas Company acquired from the Southern Oil Production Company in the West Texas area certain production system properties, gathering system properties, and transmission system properties, all totaling \$966,600.11; the total of those being \$2,305,006.37. The actual net additions to the property for the year 1932 was \$2,257,682.07. Thereby we see that approximately \$50,000.00 of other property was written off during that period.

Q. In other words, property that had worn out, been retired, or junked?

A. And leases written off, or something of that kind and character.

Q. If you refer to page 2 of Defendant's Exhibit No. 6 what is the per cent relation of the amount available for depreciation and return to the actual cost of the public service property for the twelve months ended December 31, 1932?

A. 9.31 per cent.

Q. Now, Mr. Huley, all of the explanation which you have given in respect of Defendant's Exhibit No. 5 is equally applicable to Defendant's Exhibit No. 6, except that Defendant's Exhibit 6 covers operations for the year 1932, whereas Defendant's Exhibit 5 covers operations for the year 1931?

A. That is correct. In all other respects they are the same.

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Q. Refer, please, to Defendant's Exhibit No. 7, Mr. Huley, and give a brief explanation thereof.

A. Exhibit 7 covers Public Service Operations of the Lone Star Gas Company, and sets out the amount Available for Depreciation and Return for the Twelve Months Ended June 30, 1933. The third and fourth pages of this exhibit have been prepared in exactly the same manner as

Exhibits Numbers 5 and 6, with the exception that Exhibit No. 7 covers the Twelve Months period ended June 30, 1933. The results of pages 3 and 4 have been brought forward to the Summary Sheet, which is page Number 2 of the Exhibit, and shows the following: That the actual cost of Public Service Property as reflected by the books at June 30, 1933 was \$49,923,137.26; and the amount Available for Depreciation and Return, as shown on page 3 of the Exhibit, has likewise been transferred to the summary sheet, which is page 2, in the amount of \$4,491,825.60; and the Amount Available for Depreciation and Return, when expressed as a Percentage of the Actual Cost of Public Service Property [fol. 97] is 8.99 per cent.

Q. Mr. Huley, it would appear from looking at the last page of Defendant's Exhibit No. 7 that the Cost of the Public Service Property is \$49,923,137.26 at June 30, 1933, whereas the Cost at December 31, 1932, as reflected by the last page of Defendant's Exhibit No. 6 was \$50,034,431.70?

A. Yes, sir; that is true.

Q. Why that difference, Mr. Huley?

A. That difference is caused from the writing off of property that had become worn out, or no longer used or useful in the public service operations of the Company.

Q. As a matter of fact, will the books reflect a change in the actual cost of the Company's Public Service Property from day to day and from month to month, as property is purchased or retired from service?

A. That is quite true.

Q. Refer please, Mr. Huley, to Defendant's Exhibit Number 8—

A. Yes, sir.

Q. —which you identified on yesterday. Please give a brief explanation thereof.

A. Exhibit 8 is a statement of the Revenues, Expenses, and Amount Available for Depreciation and Return for the Twelve Months Ended December 31, 1933; and also shows the Actual Cost as Reflected by the Company Books as of December 31, 1933 of its Public Service Property. I might add that this Exhibit has been prepared in exactly the [fol. 98] same manner as the Exhibits Numbers 6 and 7, with the exception that this Exhibit covers the Twelve Months Period Ended December 31, 1933.

[fol. 99] Q. Mr. Huley, please refer to Defendant's Exhibit Number 9?

A. Yes, sir.

Q. Which was identified by you and introduced in evidence on yesterday, and give a brief explanation thereof.

A. Exhibit Number 9 has been prepared in the same manner as Exhibits Nos. 5, 6, 7, and 8, with the exception that this Exhibit covers a different accounting period from any of the other exhibits. The period covered by this exhibit is for the twelve months ended March 31, 1934. The third page in the exhibit sets out in detail the amount of Revenues, the Expenses, and finally shows the Amount Available for Depreciation and Return for this twelve [fol. 100] months period. Page 4 in the exhibit also shows in detail the Actual Cost of the Public Service Property of the Lone Star Gas Company at March 31, 1934. The amount shown on page 4 has been transferred and brought forward to the second page in the exhibit, which is the summary page, and shows the actual cost of the Public Service Property as reflected by the books of the Company at March 31, 1934, to be \$49,872,761.09. The amount shown on the third page of the exhibit as being available for Depreciation and Return has been transferred and brought forward to the summary sheet in the amount of \$4,120,143.52. The summary sheet further shows that the amount available for both Depreciation and Return, when expressed as a percentage of the rate base is 8.26 per cent.

Q. And all the detail explanation that you have given in relation to Exhibits 5, 6, 7, and 8 is equally applicable to Defendant's Exhibit No. 9?

A. That is correct.

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Q. Mr. Huley, please refer to Defendant's Exhibit Number 10, and give a brief explanation of that?

A. Exhibit Ten shows the actual cost of the Public Service Property of the Lone Star Gas Company at April 30, 1934 as reflected by its books; also shows in some detail the Operating Revenues and Operating Expenses of the Company for the twelve months period ended April 30, 1934. This exhibit has been prepared in the same manner as Exhibits Numbers 5 to 9 inclusive, with the

exception that it covers a different accounting period. Page 4 in the Exhibit shows the cost in detail of the Public Service Property at April 30, 1934, in the amount of \$49,858,-751.23. This amount has been brought forward to the second page in the exhibit, which is the summary page. The third page in the exhibit shows the Operating Revenues, the Operating Expenses, and the Amount Available for Depreciation and Return in the amount of \$4,114,322.81. This amount has likewise been brought forward to the summary sheet in the exhibit. The amount Available for Depreciation and Return when expressed as a percentage of the cost of the Public Service Property is shown to be 8.25 per cent.

[fol. 103] Q. Mr. Hulcy, please refer to Defendants' Exhibit 11 and give a brief explanation of the contents of that exhibit.

A. Exhibit 11 is a detailed statement of operating expenses for the periods shown, which are for the twelve months ended December 31, 1931, for the twelve months ended December 31, 1932, for the twelve months ended June 30, 1933, for the twelve months ended December 31, 1933, and for the twelve months ended March 31, 1934, or, in other words, it is the detail of the operating expenses shown on Exhibits Numbers 5, 6, 7, 8 and 9. The exhibit shows the several classifications of operating expenses by detailed account numbers, and they are divided as follows: The production system expense. Now, this classification of expense represents all of the expenses incurred by the company in connection with the production of its own gas.

Q. Mr. Hulcy, please explain what you mean by the account numbers, which appear to be, starting with the second page, of Defendants' Exhibit 11, Numbers 306, 312, 313, etc.

A. The uniform classification of accounts used by Lone Star Gas Company uses account numbers in addition to the description of the account, so that any time we are talking about Account No. 306 we know just exactly what it covers without having to go back to the description of the account. Distribution of charges by distribution clerks are made to account numbers rather than to description of accounts, and these numbers are set out in the uniform classification of accounts used by the company, and it is

for a matter of reference. After production system expense [fol. 104] is shown the gathering system expense, divided between operation and maintenance, the operations being broken down over some ten or twelve accounts, the maintenance accounts being broken down over some six or eight accounts, and the total for both the operations and maintenance, as well as the total for the gathering system expense, is shown for each of the twelve month periods covered by the exhibit. Next is shown transmission system expense, divided between operation and maintenance, the operation being further broken down over some ten or twelve accounts and the maintenance likewise being broken down by six or eight accounts. The second page of the exhibit—

Q. Do you count the title page?

A. Yes; this is the third page, the title page being page No. 1. The third page in the exhibit sets out in detail compressor station expense, divided between operation and maintenance, and each of these divisions being further broken down over several accounts. The next classification of expense shown is new business expense, which is divided over some five accounts. The next classification of expense shown is the general expense, which covers the administrative salaries, legal expenses, miscellaneous office expenses, operation and maintenance of the telephone system, all insurance expense, all regulatory commission expense, etc. Then the total of the operating expenses for each of these accounting periods is shown, which is the total of the production system expense, gathering system expense, transmission system expense, compressor station [fol. 105] expense, new business expense, and general expense, and the amount shown for each classification of expense ties in and is a breakdown of the amount shown for the particular classification of expense in Exhibits Numbers 5 to 9, inclusive.

The Court: Mr. Witness, this Exhibit No. 11, as to the amounts you show there all the way through, is your testimony the same as to the other—you have taken the items from the books of the company?

A. Yes, sir; that is quite correct.

Q. In other words, the breakdown or detail of operating expenses as set forth in Defendant's Exhibit 11 is the actual cash expenses of the company for the several items therein enumerated?

A. Yes, sir. Now, that applies to everything with the exception of one account that I can think of right at this time; that is Account No. 461, Management Fees and Expenses. Management Fees are accrued on the books for the current month, based on revenues for the preceding month, but in order that it might tie in exactly with the contract an adjustment was made bringing it down to the particular twelve months covered by the exhibit, and with that exception it is as stated on the books.

Q. Mr. Huley, please refer to Defendant's Exhibit 12 and give a brief explanation of that exhibit.

A. Exhibit 12 is prepared in the same manner.

* * * * *

[fol. 106] A. Exhibit 12 is prepared in the same manner as Exhibit No. 11. Exhibit No. 11 was a detail of operating expenses as shown on Exhibits Numbers 5 to 9, inclusive. Exhibit No. 10 was a statement of operating revenues and expenses for the twelve months ended April 30, 1934, and Defendant's Exhibit No. 12 is a detail of the operating expenses shown in that exhibit and, as stated before, is prepared in the same manner as Exhibit No. 11.

Q. The only difference being that it covers a different accounting period of twelve months?

A. Yes, sir; that is correct.

Q. And it does reflect the actual operating expenses of the Lone Star Gas Company for the twelve month period ended April 30, 1934?

A. That is correct.

Q. Mr. Huley, in your several exhibits labeled here Defendant's Exhibits 5 to 10, inclusive, you have shown the cost of the public service property of the Lone Star Gas Company, exclusive of the Fort Worth division, to be in round figures fifty million dollars?

A. That is correct.

Q. Mr. Huley, what has been the general policy of the company in connection with the capitalization of general and undistributed costs?

A. The policy of the company up until 1928 or 1929 was not to capitalize any of the so-called overheads or undistributed general costs; they were all charged to operating expenses, with the exception of, I believe, in the year 1920 some ninety thousand dollars was capitalized as interest [fol. 107] during construction. With the one exception,

I believe about the first overhead setup was either in 1928 or in 1927.

Q. Now, to get at this matter, possibly you had better define what you mean by general or undistributed cost and general overhead cost.

A. I have particular reference to interest during construction, administrative and legal expenses during construction, taxes during construction, engineering expenses during construction. Included in the administrative and legal expenses is the clerical expense in connection with the ordering of materials, the handling of invoices through the records during the construction period, the handling of the accounts through the Accounting Department, through the Treasury Department, the preparation of the vouchers covering materials, the handling of the vouchers, the writing of the checks, the posting to the construction job orders numbers, the checking of job orders against the engineering records, the reconciliation of those two records, and the proper classification to the permanent investment accounts. Those are all of the general things to which I have specific and particular reference. In addition to that, of course, legal expenses which would be incurred in connection with the right of way, perhaps condemnations, and any other legal ends that might come about through a construction program. Prior to 1927 we did not—and when I say “we” I mean the Lone Star Gas Company, by whom I am employed—did not capitalize or set up as a part of the property account [fols. 108-110] those costs which were actually incurred. With the exception of the year 1920, the Lone Star Gas Company did not set up and capitalize as a part of the costs of any construction the amount of interest during the construction period and prior to the turning over ready for operation.

[fol. 111] Q. Now, Mr. Huley, in connection with the Lone Star Gas Company, you say that up until 1927 or '28 it was not the general policy of the Company to capitalize these general overhead and construction costs?

A. No, sir, it was not.

Q: They were all charged to operating expense.

A. That is correct.

Q. Was a very substantial part of the Lone Star Gas Company property constructed prior to 1927 and '28?

A. Yes, sir, it was.

Q. When did the Lone Star Gas Company commence business?

A. In 1909.

Q. So from 1909 to 1927 or '28, a period of eighteen or nineteen years, the Company did not capitalize the general overhead and construction costs?

A. No, with the exception of the \$90,000.00 of interest during construction capitalized in 1920.

Q. In your opinion as an accountant, to the extent that the Company failed to capitalize general overhead and construction costs, do the books of the Company understate the actual cost of the Lone Star Gas Company's public service property?

[fol. 112] A. Yes, sir, the books do understate the actual cost of the public service property, for the reason that a part of the actual cost of the property was charged to operating expenses during the years prior to 1927.

Q. How much, in amount, of general and undistributed construction costs has been capitalized by Lone Star Gas Company and is reflected by its books?

A. On December 31, 1933, there has been capitalized as of the public service property of the Lone Star Gas Company the sum of \$739,958.75, that being made up of interest during construction and other general overheads during construction.

Q. In your opinion, Mr. Hulcy, were all of the items of general and overhead construction costs which were capitalized, properly capitalized and set up as a part of the cost of the property?

A. Yes, sir, they certainly were; such amounts as were capitalized were a part of the actual cost to the Company, and properly so reflected.

Q. From your own experience in connection with the construction of large natural gas projects, do you believe that the amount of capitalized general and undistributed costs set up on the Lone Star Gas Company books at December 31, 1933, represented all of the costs which should properly have been capitalized in that connection?

A. No, sir, they do not.

[fol. 113] Q. What was the general policy of the Company in connection with the capitalization of the drilling cost of wells?

A. Prior to 1929, I believe it was the policy of the Com-

pany in the drilling of gas wells, regardless of whether they were producers or dry holes, to charge all of the development cost direct to operating expenses, and charging to the investment account only the cost of the leasehold, and the actual cost of the materials left in the hole to the permanent investment account, the remainder of the cost being charged to operating expenses.

Q. In other words, if the Company drilled a gas well producing ten million cubic feet of gas per day, the Company did not capitalize the direct cost or the actual drilling cost on that well?

A. No, sir, they did not; only the actual cost of the materials that were left in the hole.

Q. Now, prior to 1929 when the Company began the capitalization of those costs of drilling wells, had the Company drilled a great many wells, and which wells are in service as of this date?

A. Yes, sir, they had.

Q. To the extent that the Company failed to capitalize prior to 1929 the cost of drilling wells, do the books of the Company understate the actual cost of the Company's public service property?

A. Yes, sir, they do.

[fols. 114-116] Q. What was the general policy of the Company in respect of the capitalization of the cost of construction of field wells?

A. They had the same. Prior to 1929 the policies with reference to well lines were the same as their policy concerning the drilling of wells. I mean if we laid a well line to a certain well, the costs were calculated or kept covering the labor and materials and so forth that went into the cost of that particular well line; that all of the charges covering everything with the exception of materials that were actually left in the line were charged to operating expenses, and the materials only being carried to and placed in the investment account.

Q. Well, to the extent that the Company failed to capitalize the actual construction costs on field lines, do the books of the Company again understate the actual cost of the public service property as of this date, or as of any date covered by your exhibits 5 to 10, inclusive?

A. Yes, sir.

Q. Mr. Hulcy, will you please refer to Defendant's Exhibit 13?

A. Yes, sir.

[fol. 117] Q. Mr. Huley, Sections 1 and 2 of Defendant's Exhibit 13 are based upon the application of the 40 cent gate rate?

A. Yes, sir, they are.

Q. Which the Company actually has been charging?

A. That is correct.

Q. But using the Commission's rate base and the Commission's depreciation and depletion allowances and the Commission's adjustment of operating expenses, as set forth in its Opinion and Order of date September 13, 1933?

A. Yes, sir, that is correct; Section No. 2, of course, does that, but it takes the Commission's rate base as a starting point, and adds the actual cost of any additions.

Q. Now, in contrast to Sections 1 and 2, Sections 3 and 4 of the report are predicated upon giving effect to the 32 cent city gate rate as determined by the Commission in its Opinion and Order of date September 13, 1933, but using the Commission's adjusted operating expenses, the Commission's rate base, plus net additions, in the case of Section 4, and the Commission's determination of a proper depreciation and depletion allowance?

A. That is correct.

Q. And on Section 5, the last page—found on the last page of the index you give a summary of the adjustments determined by the Commission and a summary of all other [fol. 118] adjustments?

A. Yes, sir.

Q. And a summary of all adjustments in respect of gas purchased and other operating expenses?

A. Yes, sir, each of the adjustments applying to the several items listed or shown in detail on the pages.

Q. And when you got to those adjustments, Mr. Huley, in connection with your testimony relating to Exhibit 13, have you endeavored to set out the exact page of the Commission's Opinion and Order whereon the adjustments are shown?

A. Yes, sir, I have.

Q. Now, Mr. Huley, please refer to Section No. 1, on page 3, of Exhibit 13.

A. Yes, sir.

Q. As previously testified, all gas sales are upon the basis of the Company's actual collections at the 40 cent rate?

A. Yes, sir, that is true.

Q. The rate base, operating expenses, and depreciation and depletion are as determined by the Commission?

A. That is correct.

Q. And the Federal Income Tax is based on the amount available for return, less the interest charges paid by the Company?

A. That is correct.

Q. And at the rate applicable for the period in question?

A. That is correct.

[fol. 119] Q. Now, refer please, to page 4, Mr. Hulcy. Is that a summary of your determinations for the same five accounting periods of twelve months each?

A. Yes, sir, it is.

Q. On page 5 of the exhibit do we find a detail of your computations for the calendar year of 1931, and a summary of which computations is found in the first money column on page 4—

A. That is correct.

Q. —of the exhibit.

A. Yes, sir.

Q. Mr. Hulcy, will you refer, please, to page 5 of Exhibit 13, and give to the Court and to the Jury an explanation, in summary form, of what you have endeavored to do?

A. Page 5 of Exhibit 13 is a comparative statement of the revenues and expenses based on the actual gas sales—domestic gas sales by the Company—that is, the forty cent domestic gate rate for the twelve months ended December 31, 1931. The first money column appearing on this page is the same as shown on the Company's exhibits showing the gross revenues, the deductions from gross revenues, and the amount available for depreciation, depletion, Federal income tax, and return. The second column sets out the adjustments or differences found by the Commission, and which were given effect to in their Opinion and Order dated [fol. 120] September 13, 1933, but after giving effect to those adjustments, and either adding or deducting, whichever the case may be, to the amounts as shown on the Company's exhibits, then we arrive at amounts for operating revenues and operating expenses which would be in line and in keeping with the findings made by the Railroad Commission. Now, it will be noticed that the Company exhibits only go

down as far as the amount available for depreciation, depletion Federal income tax, and return. The Company exhibits did not show any amount for depreciation and depletion, but rather stated the amount that was available for both return and depreciation. However, the Commission did find amounts that should be charged as depreciation and depletion, and in this particular case they have been shown and carried down to the net amount available for return. In this case—that is, for the twelve months ended December 31, 1931, the gross revenues would be \$9,303,881.76. Now, on gas purchased the Commission made no adjustments; production system expense they made no adjustments; the gathering system expense, the transmission system expense, the compressor station expense, the new business expense, the general expense, the uncollectible bills, the taxes—other than Federal, the Commission used exactly the same figures as used by the Company and shown in their exhibits. However, management fees and expenses which were shown in the Company's exhibits and so reflected on their books, in [fol. 121] the amount of \$91,375.38 was eliminated by the Commission in arriving at the operating expenses for this particular period. This item was discussed at length on pages 9 to 11 of the Opinion and Order of the Commission, wherein it was eliminated as an operating expense which would be allowed to the Company. Regulatory commission expense was allowed by the Commission for the year 1931 in the same amount as shown on the books of the Company. [fol. 122] Dry hole expense was shown on the books of the company in the amount of \$65,871.56. The Commission determined and set out in their opinion and order that dry hole expense should be based on an average for five years, and they discussed that at length on page 12 of the opinion and order.

Q. You make a reference to page 12 of the opinion and order in connection with dry hole expense on page 57 of this Exhibit 13?

A. Yes, I do. In this particular case the average for the five year period ended December 31, 1931, was \$79,453.12. The actual expense incurred was only \$65,871.56; therefore by handling in that method the Commission actually allows \$13,581.56 as an added operating expense for that particular period. Now cancelled and surrendered leases was shown by the books for this accounting period to be \$239,230.96. The Commission finds that this expense should also

be based on an average for five years; they also discuss that at page 12 of the opinion and order, and reference to that page number is shown on page 59 of this exhibit. The average cancelled and surrendered lease expense for the twelve months ended December 31, 1931, which was determined by the Commission was \$99,140.73. This amount when deducted from the actual amount charged for the year 1931 made an adjustment of \$140,090.25 which was eliminated from the expense of the company for that particular accounting period. Now in addition to that, there was an addition made to the other non-operating revenues in the amount of \$1,146.89.

[fol. 123] Q. That appears at the top of page 5?

A. Yes, it does. Now, this adjustment is not discussed in the opinion and order of the Commission for the reason that this amount was found by the auditors of the Commission and was eliminated by them, which makes the difference between the amount found by the company and the amount found by the Commission, in as much as they used the operating revenues and the non-operating revenues as determined by the auditors employed by the Commission. Now, that difference is brought about through the sale of some materials from warehouses wherein the company claimed that that loss on that material was a proper deduction from public service revenues. The auditors felt that should have been charged against depreciation reserve or something else of that kind, and so that accounts then for total adjustments or a deduction from expenses and addition to revenues—or in other words, adding to the amount available for depreciation, depletion, federal income tax and return of \$4,908,024.24 as shown by the company, of adjustments in the amount of \$219,030.94 as determined by the Commission which is added thereto and thereby making an amount available for depreciation and return of \$5,127,055.18, and that is as found by the Commission for that particular period. Then as a deduction from that amount is shown depreciation and depletion. Now the detail of the depreciation and depletion allowances is set out for this period on page 14 of the Exhibit and is as follows:

[fol. 124] Depreciation amount allowed by the Commission and set out on page 69 of their opinion and order dated September 13, 1933, in the amount of \$968,066.98. Depletion amount allowed by the Commission and set out

on page 76 of their opinion and order dated September 13, 1933, in the amount of \$15,631.45, making a total for both depreciation and depletion of \$983,698.43; that is the amount shown on page 5 as an allowance for both depreciation and depletion. That amount when deducted from the amount shown above leaves as available for federal income tax and return, \$4,143,356.75.

Federal income tax is shown on page 5 of the Exhibit in the amount of \$375,116.98, and the detail of that calculation is shown on page 16 of this exhibit. It shows that the amount available for federal income tax and return after depreciation, is an amount of \$4,143,356.75, and then deducting the interest charges paid and accrued by the company for this accounting period in the amount of \$1,017,381.94 leaves \$3,125,974.81 that would be subject to federal income tax. The federal income tax rate for the year 1931 applying to corporations was 12 per cent. This 12 per cent of the amount just stated would result in a federal income tax in the amount of \$375,116.98 and that is the amount that is shown on page 5 of this exhibit.

The federal income tax when deducted from the amount available for both tax and return, leaves as available for return \$3,768,239.77. The exhibit further shows that the [fol. 125] rate base as set out in findings by the Commission and referred to on page 71 of the printed order and opinion, in the amount of \$46,246,617.53 and the amount available for return when expressed as a percentage of the rate base would be 8.15 per cent.

Q. Now, Mr. Huley, on page 6 do you set out a similar determination for the twelve months ended December 31, 1932?

A. Yes, I do.

Q. And on page 7 do you set out a similar determination for the twelve months ended June 30, 1933?

A. Yes, I do.

Q. And on page 8 a similar determination for the twelve months ended December 31, 1933?

A. Yes, I do.

Q. On page 9 a similar determination for the twelve months ended March 31, 1934?

A. Yes, I do.

Q. And a summary of those calculations is carried over to page 4 of your Exhibit 13?

A. That is correct.

Q. What per cent of the rate base was available for return as shown by page 4 of Exhibit 13 for the several accounting periods mentioned?

A. For the twelve months ended December 31, 1931, the amount available for return was 8.15 per cent of the rate base as determined by the Commission. For the twelve months ended December 31, 1932, the amount available for [fol. 126] return when expressed as a percentage of the rate base was 8.23 per cent. For the twelve months period ended June 30, 1933, the amount available for return, when expressed as a percentage of the rate base, is 7.55 per cent. For the twelve months ended December 31, 1933, the amount available for return, when expressed as a percentage of the rate base, is 6.01 per cent. And for the twelve months ended March 31, 1934, the amount available for return, when expressed as a percentage of the rate base, is 6.42 per cent.

Q. Now, of course, when you used the phrase, "available for return", you referred to the net return?

A. Yes, that is after the allowance for depreciation and all other charges.

Q. Now all of the calculations summarized and set forth on page 4 of Exhibit 13 reflect gross revenues of the company, actually received under the 40 cent domestic gate rate?

A. That is correct.

Q. And for the calendar year 1933, under the 40 cent domestic gate rate charged by the company, the company only had available 6.01 per cent for net return as applied to the Commission's rate base?

A. That is correct, and with the operating expense as determined by the Commission.

Q. And also with the depreciation and depletion allowances as determined by the Commission?

A. That is correct.

[fol. 127] Q. Mr. Hulcy, please refer to page 17 of Exhibit 13; what is the essential difference between section 1 and section 2 of Exhibit 13?

A. The only difference between section 1 and section 2 is that the rate base is as determined by the Commission—that is set out in section 1. Section 2 contains the rate base as determined by the Commission at December 31, 1931, plus the actual cost of the net additions to property added to the rate base previously determined by the Commission.

357

Q. Now if we refer to page 18 of Exhibit 13, do we find a summary for some five 12-months accounting periods?

A. Yes, the same accounting periods set out in the summary to section 1 of the report.

Q. And giving effect to the net capital additions at cost covering the public service property of the Lone Star Gas Company and using the Commission's rate base as determined at December 31, 1931, the Commission's allowance of operating expense and the Commission's determination of a depreciation and depletion allowance, what is the per cent available for net return on the company's public service property for the five accounting periods set forth on that date?

A. Well, of course 1931 would be the same as under the other set-up, of 8.15 per cent. For the twelve months ended December 31, 1932, it would be 7.94 per cent. For the twelve months ended June 30, 1933, it would be 7.42 per cent. For the twelve months ended December 31, 1933, it [fol. 128] would be 5.98 per cent, and for the twelve months ended March 31, 1934, it would be 6.41 per cent.

Q. Mr. Hulcy, if we refer to page 19 of Exhibit 13, do we find a detail of the revenues and expenses of the company for the twelve months ended December 31, 1931, as determined by the Commission?

A. Yes, we do.

Q. And is a summary of that page carried over to the general summary sheet in the first money column on page 18?

A. That is correct.

Q. And similarly on pages 20, 21, 22 and 23 do we find the detailed calculations covering the other four accounting periods which are set forth in the money columns second, third, fourth and fifth on page 18?

A. Yes, that is correct.

Q. Is there any explanation which you needs give in respect of those several calculations?

A. I think perhaps we should explain that for the years 1932 and for all subsequent accounting exhibits included in this report based on the findings of the Commission, it was necessary to make an adjustment covering gas purchases from the property formerly owned by the Meridian Gas Company. Section 1 of the report does set that information out and follows the findings made by the Commission. Section 2 of this report being based on the rate base

found by the Railroad Commission at December 31, 1931, plus the net additions to the public service property at [fol. 129] cost, which would include the property acquired from the Meridian Gas Company; then the adjustment made for the gas purchased expense would necessarily be eliminated, and that has been done in Section 2 of this report.

Q. In other words, you eliminated the gas purchased expense, and included the property?

A. That is correct.

Q. Please refer to page 30 of Exhibit 13. Now as you have previously testified, Mr. Hulcy, sections 3 and 4 of Exhibit 13 are based upon the application of the 32 cent domestic gate rate prescribed by the Commission in its opinion and order of date September 13, 1933?

A. That is correct.

Q. And all of the calculations in respect of Section 3 of this report are upon the assumption that for the five accounting periods shown on page 31 the company only received for domestic gas at the city gate 32 cents per thousand cubic feet as fixed and prescribed in the Commission's order?

A. That is correct.

Q. Now Mr. Hulcy, will you please explain what is set forth on page 31 of Exhibit 13?

A. Page 31 as just stated is a summary brought forward from pages 32, 33, 34, 35 and 36, of the revenues based on a 32 cent domestic gate rate, with the operating expenses as determined by the Railroad Commission and as set out in their opinion and order, and with the depreciation and [fol. 130] depletion allowances as set out by the Commission in their opinion and order; with the federal income tax calculated on the amount available less a deduction for the total interest paid by the company; with a rate base as set out in the findings by the Commission and in line with their findings all the way through. Then the schedule shows last the amount available for return expressed as a percentage of the rate base, and those amounts are as follows, giving effect to these things I have mentioned. For the twelve months ended December 31, 1931, the amount available for return would be 5.56 per cent of the rate base as determined by the Commission. For the twelve months ended December 31, 1932, the amount available for return would be 5.76 per cent of the rate base as determined by the Commission. For the twelve months ended June 30, 1933,

the amount available for return would be 5.22 per cent of the rate base as determined by the Commission. For the twelve months ended December 31, 1933, the amount available for return would be 3.97 per cent of the rate base as determined by the Commission. For the twelve months period ended March 31, 1934, the amount available for return would be 4.31 per cent of the rate base as determined by the Commission.

Q. In other words, Mr. Hulcy, for the very calendar year of 1933 in which year the Commission entered its order fixing a 32 cent city gate rate to be charged by the Lone Star Gas Company, defendant here, if we give effect to the application of that 32 cent gate rate and using revenues [fol. 131] and expenses exactly as the Commission used them in its opinion and order, and using the same depreciation and depletion allowances and the value of the property as determined by the Commission, the company would have had available only 3.97 per cent of the rate base for net return?

A. That is correct.

Q. And similarly for the twelve months ended March 31, 1934, the company would have had available only 4.31 per cent of the rate base?

A. That is correct.

Q. On pages 37, 38, and 39 do you show various calculations and give various references having to do with section 3 of this exhibit?

A. Yes, I do.

* * * * *

[fol. 132] Q. Mr. Hulcy, please refer to page 40 of Defendant's Exhibit No. 13?

A. Yes, sir.

Q. That appears to be a summary of the bases upon which Section 4 of this exhibit is prepared?

A. That is correct.

Q. And what is the essential difference between Section 3 and Section 4 of this exhibit in so far as the determinations are made relative to the per cent of rate base available for return?

A. Section 3 is prepared giving effect to the rate base established by the Railroad Commission and set out in their opinion and order. The rate base as used in the prepara-

tion and also the calculations included in Exhibit—Section 4—are based on the rate base found by the Commission at [fol. 133] December 31, 1931, plus net additions to Property at Cost to Lone Star Gas Company at the respective dates.

Q. Now, a substantial portion of this net capital additions to the Public Service Property consist of the Meridian Gas Company property?

A. That is correct.

Q. As of December 31, 1931, the Lone Star Gas Company had been buying a considerable quantity of gas from the Meridian Gas Company, in the State of Oklahoma?

A. That is correct.

Q. And as of January 1, 1932, according to your testimony, the Lone Star Gas Company acquired the property of the Meridian Gas Company?

A. That is correct.

Q. So Section 4 and the schedules set forth in summary form on page 41 of Exhibit 13 give effect to the acquisition of the Meridian Gas Company property?

A. That is correct.

Q. As well as give effect to other net capital additions at cost?

A. That is correct.

Q. Refer, please, to page 41 of Exhibit 13. Expressed as a per cent of the rate base so determined, what is the per cent available for each of the five twelve-months accounting periods set forth on that page?

[fol. 134] A. For the twelve months ended December 31, 1931, the amount available for return is 5.56 per cent of the rate base. For the twelve months ended December 31, 1932, the amount available for return is 5.57 per cent of the rate base. For the twelve months ended June 30, 1933, the amount available for return is 5.17 per cent of the rate base. For the twelve months ended December 31, 1933, the amount available for return is 4.01 per cent of the rate base. For the twelve months ended March 31, 1934, the amount available for return is 4.36 per cent of the rate base.

Q. Mr. Huley, if we refer to page 42 of Exhibit 13 do we find there a detail of the amount available for return expressed as a per cent of the rate base for the twelve months ended December 31, 1931?

A. Yes, sir; we do.

Q. And a summary of that determination is carried forward to page 41 in the first money column under the heading "December 31, 1931"?

A. Yes, sir; that is correct.

Q. In a similar manner, Mr. Hulcy, have you calculated the per cent of rate base available for return for the twelve months ended December 31, 1932, June 30, 1933, December 31, 1933, and March 31, 1934, on pages 43, 44, 45, and 46, respectively, of Exhibit 13?

A. Yes, sir; I have.

Q. Now, Mr. Hulcy, is any explanation needed, in order [fol.135] that the Court and jury may understand the basis of the calculations which are summarized on page 41 of Exhibit 13?

A. No, sir; I don't believe that any further explanations are necessary. The same explanations as made in connection with Section 2 of the Report with reference to the rate base also apply to Section 4 of this Exhibit 13.

Q. On page 47 of Exhibit 13 do you state that the calculations for this section of the Report are the same as for Section Number Two, and that a detail will be shown on pages 24 and 25 of the exhibit?

A. Yes, sir; I do.

Q. Do you show the same thing on page 48 in connection with the Depreciation and Depletion Allowances?

A. I do.

Q. On page 49 do you show the Federal Income Tax Calculations applicable to these five accounting periods of twelve months each, which you have just testified about?

A. I do.

Q. Commencing at page 50 in Exhibit 13 do you show a detail of the several adjustments and eliminations as made by the Railroad Commission and set out in their opinion and order dated September 13, 1933?

A. I do.

Q. Those adjustments relate to gas purchased, management fees and expenses, Regulatory Commission expense, dry hole expense, cancelled and surrendered leases, and Miscellaneous Deductions?

[fol.136] A. They do.

Q. In other words, the detail of the Adjustments will be found in Exhibit 13 at pages 51 to 62 inclusive?

A. That is correct.

Q. Mr. Hulcy, is there any further explanation which you think should be made in connection with your Exhibit 13?

A. No, sir.

Q. Please refer, Mr. Hulcy, to your Exhibit 14. On the second page do you show three bases of calculations?

A. Yes, sir; I do, styled "A", "B", and "C".

Q. And have you endeavored to set forth sufficient explanatory matter on page 2 of Exhibit 14 to make your determinations as set forth on page 3 understandable?

A. Yes, sir; I have.

Q. Give a rather brief description of what is set forth in your Exhibit 14.

A. Exhibit 14, Section "A", with the information given in connection with the schedule, and which is the first money column appearing on page 3 of the Exhibit, is based on the actual revenues with the 40-cent domestic Gate Rate; with the Operating Expenses actual as reflected by the Company's books, that is without any adjustments; with the Depreciation and Depletion Allowances as determined by the Railroad Commission; the Federal Income Tax the amount shown as available for return calculated at a rate of 13.75 per cent; and with a rate base as determined by [fol. 137] the Commission; and by referring to page 3 of the Exhibit, under "A", it will be noted that the Gross Revenues amount to \$7,958,518.38; the Deductions from Gross Income, which are based on the actual expenses, amount to \$3,585,713.87, and that amount when deducted from the Gross Revenues leaves as available for Depreciation, Depletion, Federal Income Tax, and Return an amount of \$4,372,804.51.

The statement further shows an allowance for Depreciation and Depletion, which is calculated in the same manner as used by the Commission, and set out in their opinion and order in the amount of \$1,001,440.56, which leaves as available for Federal Income Tax and Return an amount of \$3,371,363.95.

The statement further shows an allowance for Federal Income Tax, which is calculated and based on the amount available for Federal Income Tax and Return at the rate of 13.75 per cent. This amounts to \$463,562.54, and that amount when deducted from the amount shown above leaves as available for Return \$2,907,801.41.

The statement further shows that the rate base, which is calculated and determined in the same manner as used by

the Commission, as set out in their opinion and order, in the amount of \$47,192,765.79; and the amount available for Return, when expressed as a percentage of the rate base is shown to be 6.17 per cent.

The amounts shown in Column "B" are based on a [fol. 138] 32-cent Domestic Gate Rate, with Actual Operating Expenses as reflected by the Company's books, with a Depreciation and Depletion Allowance calculated in the same manner as determined by the Commission; with the Federal Income Tax calculated and based on the amount available for Return at the rate of 13.75 per cent; and the rate base is the same as determined by the Commission; and giving effect to all of those things, the amount available for Return when expressed as a per cent of the rate base is 4.07 per cent.

In the next Column "C", the calculations are based on a 32-cent Domestic Gate Rate, with Actual Operating Expenses as reflected by the Company's books; with the Depreciation and Depletion calculated at the same rates as found by the Commission; with the Federal Income Tax calculated at the rate of 13.75 per cent, based on the amount available for Return; and the rate base is the actual Cost as reflected by the Company's books at April 30, 1934; and by giving effect and basing the calculations on those several different items, the amount available for Return when expressed as a per cent of the rate base is 3.76 per cent.

Q. Now, Mr. Huley, it is noticed that none of your accounting exhibits from 4 to 14 inclusive come past the twelve months period which ended April 30, 1934?

A. No, sir; they do not.

Q. Wouldn't it have been possible for you to have [fol. 139] brought your accounting exhibits up to date—up to the date of this hearing?

A. No, sir; it would not. April 30th is the last information—that is, complete information, that is available at this time. In actual practice the accounts are closed along about the 25th of the following month, so the May accounts will not be out until about the 25th of June; so April 30th is the last information available.

Q. Mr. Huley, throughout your exhibits 4 to 14 inclusive, wherever you show the Actual Cash Cost to the Company of its Public Service Property, is there any inclusion in that amount for Working Capital or Materials and Supplies on

Hand Used and Useful in connection with the Company's Public Service Operations?

A. No, sir; there is not any amount included in the amounts I have given for Cash Working Capital or for Materials and Supplies.

Q. In your Exhibits 11 and 12, Mr. Hulcy, you have set forth in detail the Operating Expenses of the Company for various twelve months accounting periods?

A. Yes, sir; I have.

Q. You state that you are Assistant to the President of the Lone Star Gas Company?

A. Yes, sir; I am.

Q. And that you are familiar with the detail of the Company's operating expenses?

[fol. 140] A. Yes, sir; I am.

Q. You are familiar with the management of the Company, and with the general conduct of its business?

A. Yes, sir; I am.

Q. Are the Operating Expenses which are reflected by your exhibits here as actually having been incurred for the period commencing January 1, 1931 and ended April 30, 1934, the result of the exercise of the best judgment of the Management of the Company?

A. They certainly are.

Q. And were all of the Expenses incurred and paid in good faith?

A. Yes, sir.

Q. Mr. Hulcy, in connection with several of your exhibits relating to Operating Expenses you show the payment of certain Management Fees and Expenses?

A. Yes, sir.

Q. Running from approximately seventy-five thousand to one hundred thousand dollars per annum?

A. Yes; that is correct. I believe—just one minute now—I believe we have a low figure of seventy-five thousand dollars plus, and a high figure of ninety-one thousand dollars plus.

Q. Will you please explain to the Court and jury what that expense for Management Fees and Expenses represents?

A. That amount represents the actual amount paid to the Lone Star Gas Corporation by the Lone Star Gas Company. [fol. 141] Now, that is the amount that is applicable to the public service property of Lone Star Gas Company. Some

additional amounts are paid for the non-public service operations and property of the Lone Star Gas Company, such as oil operations and the gasoline plants; however, they are comparatively small.

Q. And not involved in this procedure?

A. No, sir; they are not involved in this procedure. Those charges are covered by a contract which was entered into by and between the Lone Star Gas Company and Lone Star Gas Corporation as of January 1, 1929, and to cover, among other things, Executive Aid and Assistance, Legal Aid and Assistance, Purchasing Aid and Assistance, General Engineering, General Accounting, and Financial Aid and Assistance. I believe that those are the principal things covered in that contract between Lone Star Gas Corporation and Lone Star Gas Company; and the rate set out in the contract is that the Lone Star Gas Company will pay, and the Lone Star Gas Corporation will receive, an amount equal to one per cent of the Gross Operating Revenues of the Lone Star Gas Company, for such services.

[fol. 142] Q. What are the major services rendered by the Lone Star Gas Corporation to the Lone Star Gas Company and in consideration of which these fees are paid?

A. Well, I would say that the major, or perhaps the most important thing in the way of service that has been rendered by the Lone Star Gas Corporation would be in the matter of financial aid and assistance. The Lone Star Gas Corporation has advanced to the Lone Star Gas Company sums of money—I believe the peak was something in excess of nineteen millions of dollars, and at the present time Lone Star Gas Company owes to the Lone Star Gas Corporation for moneys which the Corporation has advanced to the Company seventeen million six hundred thousand dollars, and I would say, particularly in times such as these, that that is perhaps the most important and the outstanding thing or service that has been rendered by the Corporation to the Company.

Q. At what rate of interest has the Lone Star Gas Corporation furnished money to the Lone Star Gas Company?

A. Six per cent.

Q. Per annum?

A. Yes, sir, six per cent per annum.

Q. You spoke a moment ago of certain purchasing services being rendered by the Lone Star Gas Corporation to

the Lone Star Gas Company. What is the general nature of those purchasing services?

A. Mr. J. M. Simpson, a Vice-President of Lone Star Gas Corporation, with offices in Pittsburgh, Pennsylvania, acts [fol. 143] as the General Purchasing Agent, particularly with reference to heavy materials, such as pipe, for all the underlying companies or subsidiary companies of Lone Star Gas Corporation, and Mr. Simpson has bought practically all of the pipe that has been used by Lone Star Gas Company for them.

Q. Have those purchases amounted to many millions of dollars' worth of pipe?

A. Yes, sir, they have, substantial sums.

Q. And as a result of the services of Mr. Simpson has the Lone Star Gas Company been able to secure pipe at extremely low prices?

A. Yes, sir, I would say that they have secured pipe at the best prices that were available to any one. I might add that, in addition to Mr. Simpson's duties as a Vice-President of Lone Star Gas Corporation, he is also the chief purchasing officer for the Columbia Gas and Electric Corporation, with headquarters in Pittsburgh, and I believe that perhaps the assets of that company are somewhere between six and seven hundred millions of dollars, so it is a good sized company; naturally, they have a lot of purchases, and the Lone Star Gas Corporation or the companies in the Lone Star Gas Corporation group receive and have received the same prices that the Columbia Gas and Electric Corporation would be able to receive or obtain.

Q. In other words, has there been a saving to Lone Star Gas Company in connection with the purchases of pipe and heavy material which have been made by Mr. Simpson for [fol. 144] the account of Lone Star Gas Company?

A. Yes, sir; there has.

Q. And has that been due in large part to the large purchasing power which Mr. Simpson has?

A. Yes, sir; I would say so.

Q. Mr. Huley, does Lone Star Gas Company have any pipe lines extending from or through the State of Oklahoma into the State of Texas?

A. Yes, sir; they do.

Q. Are those major pipe lines?

A. Yes, sir; they are.

Q. What are the sizes of those pipe lines?

A. Principally twelve, sixteen and eighteen inch.

Q. When was the sixteen inch pipe line of the Lone Star Gas Company extending from the State of Oklahoma into the State of Texas built?

A. The sixteen inch pipe line is what is known as our Line G, extending north from Gainesville, or rather south to Gainesville from the State of Oklahoma.

Q. South to Gainesville, Texas?

A. Yes, sir. That line was completed in December, 1918.

The Court: I didn't get that date.

A. December 1918; that is the sixteen inch line. Line H, a twelve inch line south from Walters to Petrolia, Texas, in Clay County.

The Court: To what?

A. To Petrolia, Texas, in Clay County. That was completed in February, 1918.

[fol. 145] Q. Now, you spoke of Walters. Is that a point in Cotton County, Oklahoma?

A. Yes, sir; it is. Line Second H, another twelve inch line, which parallels Line H, was completed in December, 1919. Line A, an eighteen inch line extending from Wheeler County in the Panhandle District of Texas down through the State of Oklahoma and back into Texas, was completed in 1926, or 1927, in part. We also have what we call Line E-5 that extends from Texas into Oklahoma.

The Court: I didn't get that, either.

A. Line E-5 that extends from Texas into Oklahoma. It was completed in 1925.

The Court: Between what points is that line?

A. That line is extended from Texas into Durant, Oklahoma.

The Court: From what point in Texas?

A. I will have to get the map.

The Court: State it if you know. If you don't remember, all right.

A. I don't remember just the county in Texas it goes through, now, but I think I have a map right here that will show. (Witness inspects map.) From Grayson County, Texas.

The Court: North from Denison?

A. Yes, sir, into Bryan County, Oklahoma.

Q. Mr. Huley, I hand you an instrument which I shall ask you to identify.

A. This is a gas sales contract between Lone Star Gas Company and the Municipal Gas Company covering domestic gas for distribution by the Municipal Gas Company [fol. 146] within the city or town of Iowa Park, Texas.

Q. Is it the original of that contract?

A. Yes, sir; it is.

Q. And does it govern the delivery by the Lone Star Gas Company and sale by the Lone Star Gas Company to the Municipal Gas Company of domestic gas at the city gate?

A. Yes, sir; it does—the contract being dated September 30, 1931.

Mr. Griffith: We offer the contract.

[fol. 147] (Thereupon the contract referred to was offered in evidence by defendant and marked Defendant's Exhibit No. 15.)

Q. Mr. Hulcy, I hand you herewith an instrument which I shall ask you to identify.

A. This is a contract between Lone Star Gas Company and Municipal Gas Company covering the sale of domestic gas for distribution within the cities of Corsicana, Hillsboro, Waxahachie, Ennis, Cleburne, Wichita Falls, Bowie, Byers, Petrolia, Bellevue, Sunset, Alvord, Bridgeport and Decatur, Texas.

Q. Does the contract bear date of December 3, 1930?

A. Yes, sir; it does, for a period of five years.

Mr. Griffith: We offer the contract so identified by the witness in evidence.

[fol. 148] (Thereupon the contract referred to was offered in evidence by defendant and marked Defendant's Exhibit No. 16.)

Q. Will you examine that document, Mr. Hulcy?

A. This is the original of a contract dated November 28, 1927, between Lone Star Gas Company and Municipal Gas Company covering the sale of domestic gas for a period of seven years to the cities of Sherman, Denison, Denton, Whitesboro, and McKinney, Texas.

Mr. Griffith: We offer the contract so identified by the witness in evidence.

(Thereupon the contract referred to was offered in evidence by defendant and marked Defendant's Exhibit No. 17.)

Q. Mr. Huley, I will ask you to identify this document which I hand you.

A. This is the original of a gas sales contract, dated July 1, 1927, and for a period of seven years, between Lone Star [fol. 149] Gas Company and Gainesville Gas and Electric Company covering the sale of domestic gas for distribution in the city of Gainesville.

Mr. Griffith: We offer the contract so identified by the witness in evidence.

(Thereupon the contract referred to was offered in evidence by defendant and marked Defendant's Exhibit No. 18.)

Q. Mr. Huley, I will ask you to identify the contract which I now hand you.

A. This is the original of a contract dated May 15, 1925, between the Lone Star Gas Company and the Dallas Gas Company covering the sale of gas for domestic purposes in the city of Dallas.

Mr. Griffith: We offer the contract so identified by the witness in evidence.

(Thereupon the contract referred to was offered in evidence by defendant and marked Defendant's Exhibit No. 19.)

Q. Mr. Huley, I will ask you to identify this document which I hand you.

A. This is a contract, being a supplemental contract to a contract dated May 15, 1925, between Lone Star Gas Company and the Dallas Gas Company, this contract being dated August 14, 1925.

[fol. 150] Mr. Griffith: We offer the contract so identified by the witness in evidence.

(Thereupon the contract referred to was offered in evidence by defendant and marked Defendant's Exhibit No. 20.)

Q. Mr. Hulcy, I will ask you to identify that instrument.

A. This is an agreement dated June 7, 1930, between the Lone Star Gas Company and the Dallas Gas Company whereby a contract expiring on June 9, 1930, is extended for a period of five years, beginning on June 9, 1930.

Mr. Stout: Mr. Griffith, to save time, we will agree that you have the same contract with all affiliates, if that is of any interest to you in the interest of time.

Mr. Griffith: I prefer to follow my own method of procedure, Judge Stout.

Mr. Stout: All right.

Mr. Griffith: We offer the contract so identified by the witness in evidence.

(Thereupon the agreement referred to was offered in evidence by defendant and marked Defendant's Exhibit No. 21.)

[fol. 151] Q. Mr. Hulcy, I will ask you to identify that instrument.

A. This is a contract—a gas sales contract dated May 15, 1931, between the Lone Star Gas Company and the Community Natural Gas Company, covering the sale of gas for domestic purposes.

Mr. Griffith: We offer the contract so identified by the witness in evidence.

(Thereupon the contract referred to was offered in evidence by defendant, and marked Defendant's Exhibit No. 22.)

Q. Mr. Hulcy, will you examine that document?

A. This is the original of a domestic sales contract, dated October 6, 1933, between Lone Star Gas Company and Waxahachie Gas Company, covering the sale of gas for distribution in the city of Waxahachie.

Mr. Griffith: We offer in evidence the contract so identified by the witness.

(Thereupon the contract referred to was offered in evidence by defendant, and marked Defendant's Exhibit No. 23.)

Q. Mr. Hulcy, I will ask you to identify the document which I hand you.

A. This is the original of a domestic sales contract dated May 15, 1925, between Lone Star Gas Company and the [fol. 152] County Gas Company.

Mr. Griffith: We offer the contract so identified by the witness in evidence.

(Thereupon the contract referred to was offered in evidence by defendant, and marked Defendant's Exhibit No. 24.)

Q. I hand you herewith a document that I will ask you to identify Mr. Huley.

A. This is the original of a special agreement dated September 21, 1926, and applying to a contract dated May 15, 1925, between the same parties.

Mr. Griffith: We offer the agreement so identified by the witness in evidence.

(Thereupon the agreement referred to was offered in evidence by defendant and marked Defendant's Exhibit No. 25.)

Q. Mr. Huley, I will ask you to identify the document that I have just handed to you.

A. This is the original of an agreement dated June 7, 1930, between Lone Star Gas Company and County Gas Company, whereby a contract terminating on June 9, 1930, is extended for a period of five years.

Mr. Griffith: We offer the agreement so identified by the witness in evidence.

[fol. 153] (Thereupon the agreement referred to was offered in evidence by defendant, and marked Defendant's Exhibit No. 26.)

Mr. Griffith: As I understood your statement, Mr. Fitzhugh, you are raising no objection to the fact that copies are being put in evidence, in lieu of the originals.

Mr. Fitzhugh: Copies are all right.

Q. Mr. Huley, I will ask you to identify this document.

A. This is the original of a contract dated September 15, 1933, between Lone Star Gas Company and Texas Cities Gas Company, covering domestic gas for distribution in the cities of Waco and Paris, Texas.

Mr. Griffith: We offer the contract identified by the witness in evidence.

(Thereupon the contract referred to was offered in evidence by defendant, and marked Defendant's Exhibit No. 27.)

Q. Now, Mr. Hulcy, you have identified, and there have been introduced in evidence, contracts labeled Defendant's Exhibits 15 to 27, inclusive,—is that correct?

A. Yes, sir.

Q. Are those the contracts under which the Lone Star [fol. 154] Gas Company is now and has been selling gas to the several distributing companies who are parties signatory to such contracts?

A. That is correct.

Q. And the distributing companies have been buying gas from the Lone Star Gas Company in accordance with the provisions of those contracts?

A. That is correct.

Q. Mr. Hulcy, are the pipe lines and facilities of the Lone Star Gas Company in what might be called a fairly fixed location?

A. Yes, sir, I would say that the present pipe lines are fixed.

Q. By reason of that fact, is the Lone Star Gas Company in its sale of gas confined to the markets which it presently serves?

A. That is quite true—they are.

Q. In connection with the contracts which have been introduced in evidence in this case—that is, the contracts between Lone Star Gas Company and the several distributing companies, being Defendant's Exhibits 15 to 27, inclusive,—I will ask you if any of those distributing companies—that is, the Texas Cities Gas Company, Community Natural Gas Company, Municipal Gas Company, County Gas Company, Waxahachie Gas Company, or Gainesville Gas and Electric Company, were parties to the proceedings [fol. 155] in Gas Utilities Docket No. 75, before the Railroad Commission of Texas, and in which docket number of the Railroad Commission of Texas entered its Opinion and Order which is in evidence here, labeled Defendant's Exhibit 3?

A. Any of those companies were not a party.

Q. Can the Lone Star Gas Company profitably market its gas elsewhere? And by "elsewhere" I mean to markets other than the markets which it now serves.

A. No, sir, it can not.

Q. Mr. Hulcy, what is the situation of the Lone Star Gas Company in respect of the sale of industrial gas?

A. The Lone Star Gas Company furnishes gas for industrial purposes at some places along main lines, and in addition to that, to all these distributing companies to which they sell gas at prices set out in the contracts. I mean by that basic prices which are based upon the amount received by the distribution companies. Naturally, there has been quite a bit of competition with reference to gas sales.

Q. What is the basis of sale by Lone Star Gas Company to the several distributing companies of natural gas for industrial purposes?

A. On a basis of 12 cents per thousand cubic feet, plus one-half of the difference between 12 cents and the amount received by the distribution company.

Q. Assuming that the distributing company was able to [fol. 156] sell a certain quantity of gas to a retail consumer at 24 cents per thousand cubic feet, what price would the distributing company pay to the Lone Star Gas Company for that gas?

A. They would pay 18 cents.

Q. Determined in what manner?

A. Determined on the base rate of 12 cents; 12 cents deducted from the 24 cents, which was the price received by the distribution company, would leave another 12 cents; that amount would be divided equally between the Lone Star Gas Company, which is the pipe line company, and the distribution company. So the Lone Star Gas Company receiving half of that 12 cents, which would be 6 cents, plus their base rate of 12 cents, would give them 18 cents, and the distribution company would receive 6 cents.

Q. Is the industrial business, or the sale of industrial gas by the Lone Star Gas Company profitable to it?

A. Yes, sir, it certainly is.

Q. Do those sales produce substantial revenues over and above the cost of making such sales?

A. Yes, sir, they do.

Q. Is it possible for the Lone Star Gas Company, in your opinion, to increase its gross and net revenues by

increasing the price which it charges for industrial gas?

A. No, sir, the sale of industrial gas is strictly competitive. It must be sold, and the price must be one that would [fol. 157] meet competition from other forms of fuel.

Q. What are the other forms of fuel which subject fuel gas to competition?

A. Our chief competitor is fuel oil.

The Court: Is what?

A. Fuel oil. There are some—we have some competition from lignite and from coal. However, fuel oil is the chief competitor that we have.

Q. Mr. Huley, at times of extreme demand—at times of extreme cold weather are the entire facilities of the Lone Star Gas Company pipe line system necessary to be utilized in connection with the delivery of gas at the city gate for retail distribution to the domestic consumers in the several towns and cities on the pipe line system served at wholesale?

A. Yes, sir.

Q. Are all industrial sales of gas subject to this contingency, when, as and if there is a prior domestic demand?

A. Yes, sir, and every industrial contract made carries that stipulation right in the body of the contract.

The Court: Gentlemen, in order to avoid confusion, now, may we understand that this witness indicates, when you say domestic gas, he means residential gas?

Mr. Griffith: Yes, sir.

The Court: Domestic gas in that sense does not include industrial gas, but only residential gas.

[fol. 158] A. Residential and small commercials, like a down-town store where they have a few stoves around; that comes within the domestic classification.

The Court: All right.

Q. Mr. Huley, you have previously testified that the books and accounts of the Company in relation to its public service property are kept in accordance with standard classifications of accounts for natural gas companies?

A. Yes, sir, as prescribed by the American Gas Association.

Q. Has the Railroad Commission of Texas ever pre-

scribed any accounting system for the Lone Star Gas Company or similar natural gas utilities?

A. They have not.

Q. Are the books and accounts of the Lone Star Gas Company kept covering the entire system operations in both Oklahoma and Texas?

A. Yes, sir.

Q. Has there ever been any order or requirement of the Railroad Commission of Texas obligating the Lone Star Gas Company to keep separate accounts covering Texas and Oklahoma operations, or segregating its intrastate from its interstate operations?

A. No, sir, there has not.

Q. Did the Railroad Commission of Texas in Gas Utilities Docket No. 75 and in which case its order of September 13, 1933 was entered, treat the Company's property, expenses and revenues as a whole for the entire system?

[fols. 159-160] A. They did, both in the States of Texas and Oklahoma.

Q. Mr. Huley, in your opinion is it possible to segregate or allocate the property, expenses, and revenues of the Lone Star Gas Company so as to determine the reasonableness of the price for gas at the city gate of any particular town or city?

A. No, sir, I don't believe it would be practicable to do that. I don't believe it would hardly be possible to make a proper allocation—anything that would be reasonable or fair, for this reason, that the pipe line system owned and operated by the Lone Star Gas Company is an integrated system comprising approximately four thousand miles of gathering and transmission lines, taking gas from several fields; gas in some part of the system to-day may be moving north, to-morrow it may be moving south, and I just don't see that it would be possible for you to allocate charges and calculate the cost of gas delivered at any particular city gate.

[fol. 161] Cross-examination.

Questions by Mr. Fitzhugh:

Q. Mr. Huley, you introduced quite a number of contracts. What are the companies concerned in the contracts just introduced?

A. Of course the Lone Star Gas Company is concerned in each of the contracts. As I recall the others, there are the County Gas Company, Dallas Gas Company, Municipal Gas Company, Texas Cities Gas Company, Gainesville Gas & Electric Company, Waxahachie Gas Company—I believe those are the companies, as I remember right now.

Q. How about the Community Natural Gas Company?

A. I thought I called that; if I didn't, it should have been included, because the Community Natural Gas Company was involved in the contracts.

Q. You made some mention while ago of the Lone Star Gas Corporation, also?

A. Yes.

Q. What is that company?

A. The Lone Star Gas Corporation is the parent company, we might term it, of certain companies—that is, the [fols. 162-163] Lone Star Gas Company, the County Gas Company, Dallas Gas Company, and other companies.

Q. That is, the Lone Star Gas Corporation is a holding company for a number of other utilities; is that right?

A. That is a correct statement.

Q. Where does the Lone Star Gas Corporation have its principal office and place of business?

A. Pittsburgh, Pennsylvania, at 800 Union Trust Building.

Q. And it is a corporation of Delaware, is it not?

A. Yes, it is.

Q. Are you an officer of that corporation?

A. I am assistant to the president of the Lone Star Gas Corporation.

Q. Are you an officer yourself, or a director in that company?

A. I am not a director, no sir; and not an elective officer.

Q. What office do you hold in the Lone Star Gas Company?

A. I am assistant to the president of Lone Star Gas Company.

Q. Are you a director in that company?

A. No, sir; I am not.

Q. What office do you hold in the Texas Cities Gas Company?

A. I believe I am assistant to the president of Texas Cities Gas Company, and also a director.

Q. The president in each case is the same man, isn't he?

A. That is true.

.

[fol. 164] Q. Now, Mr. Huley, if I understand you, the Lone Star Gas Corporation through the ownership of common stock, controls the Lone Star Gas Company, the Community Natural Gas Company, the Municipal Gas Company, Texas Cities Gas Company, County Gas Company and the Dallas Gas Company?

A. They do own the majority of the common capital stock of each of those companies which you named.

Q. And the voting control in those companies?

A. That is correct.

Q. In the case of the Dallas Gas Company, I believe the ownership of stock is indirect, and goes through the Dallas Gas Corporation?

A. That is correct.

Q. And outside of that one exception, all the rest is directly owned by the Lone Star Gas Corporation?

A. That applies both to the Dallas Gas Company and the County Gas Company.

Q. So that all of these companies come under a common ownership?

A. Each of these companies are under the Lone Star Gas Corporation, yes.

Q. Were you present, Mr. Huley, at the time this contract, your Exhibit No. 15, made between the Lone Star Gas Company and the Municipal Gas Company, was executed?

A. No, sir; I was not.

Q. Were you present when the contract was being discussed?

[fol. 165] A. No, sir,

Q. Well, were you present or have you any personal knowledge of the conditions or the discussion concerning any of these contracts that have been introduced?

A. No sir, I have not. I identified the contracts from my familiarity with the signatures of the gentlemen signing and attesting the contracts and my general information that the contracts were in existence.

Q. Do you know what person or persons drew the contract in each case?

A. No, sir, I do not.

Q. Isn't it a fact that Mr. Griffith or his subordinates drew the contracts for all of those companies?

A. Very likely he did; I am not in position to say.

Q. And isn't it a fact, Mr. Hulcy, that those contracts simply represent contracts between companies that are all part of one common business?

A. I wouldn't say that. Each of these are separate corporations, Mr. Fitzhugh; they have contracts and operate under those contracts.

Q. They are all working together to supply gas from its source to the public where it is consumed?

A. There is a common service involved.

Q. And they are all commonly owned at this time?

A. Yes, that is the Lone Star Gas Corporation owns the majority of the common capital stock, either directly or indirectly, of the companies you mentioned.

[fol. 166] Q. And they come under common management and directorship?

A. No, I would not say it was.

Q. Well, lots of these companies have directors in common, have they not?

A. There may be some directors in some companies that are also directors in other of the companies, but I would not say it was a common directorship at all.

Q. And some officers serve more than one company?

A. Yes. That is quite true.

Q. Now, who are the directors of the Lone Star Gas Company?

A. Of the Lone Star Gas Company?

Q. Yes.

A. The directors of the Lone Star Gas Company are as follows: Mr. R. A. Crawford; Mr. D. L. Cobb; Mr. R. E. Harding; Mr. L. B. Denning; Mr. F. L. Chase; Mr. Ben E. Keith, and Mr. Karl F. Griffith, being seven in number.

Q. Now Mr. Frank L. Chase is also a director in the Lone Star Gas Corporation, is he not?

A. No sir, he is not.

Q. Does he hold any office at all in the Lone Star Gas Corporation?

A. He does not.

Q. He is a director, is he not, in the Community Natural Gas Company?

A. Yes, he is.

Q. Now Mr. D. L. Cobb is an officer in the Lone Star Gas Corporation, is he not?

[fol. 167] A. Yes, he is an officer in the Lone Star Gas Corporation, holding the office of secretary and treasurer.

Q. He is an officer in the Lone Star Gas Company, is he not?

A. Yes, he is.

Q. He is a director in the Municipal Gas Company, is he not?

Mr. Shannon: Now your Honor, we make specific objection to any testimony with respect to the officers of any company other than the Lone Star Gas Corporation and the Lone Star Gas Company; we are not objecting to that question, because of the question of the management fee that the Lone Star Gas Company pays to the Lone Star Gas Corporation which is involved here, and therefore we have no objection to their going into that phase of it, but we do object to testimony with respect to the various officers and directors of the affiliated distributing companies shown to be affiliated through stock holdings or common stock ownership, because such testimony has no bearing on any issue in this case, the only issues being first the reasonableness of the gate rate fixed by the Railroad Commission, and second the question of whether or not the attempted enforcement of that gate rate operates to burden and interfere with interstate commerce, and the matter of the details of the officers and directors of the distributing companies can have no bearing on any issue in the case, and would simply serve to clutter up the record.

The Court: I overrule the objection.

Mr. Shannon: Note our exception.

[fol. 168] Mr. Griffith: Would it be understood that our objections without reiteration will run to similar interrogations?

The Court: Yes, just so that you confine it strictly to similar questions.

Mr. Shannon: It goes specifically to any questions going to who are the officers and directors of the distributing companies.

The Court: No, the question asked here is taking a man shown to be an officer and director of the Lone Star Gas Corporation and the Lone Star Gas Company, and then

undertaking to show that he is also an officer or director of one of the affiliated companies.

Mr. Shannon: Our objection goes to showing the officers and directors of the affiliated companies.

The Court: He has not asked that question yet.

Mr. Shannon: Yes, he asked whether or not Mr. Cobb was an officer of one of the affiliated companies.

The Court: Then I didn't get that—read the question, Mr. Reporter.

(Thereupon the following question was read to the court: "Q. He is a director in the Municipal Gas Company, is he not?")

Mr. Shannon: Then I objected to that question.

The Court: I overruled that objection. I understood you to say he asked the question as to who were the directors; that is, the names of the directors of the companies.

Mr. Shannon: No, sir, I simply had in mind that he might [fol. 169] ask the same question with respect to other men, and our objection would go to the same matter.

The Court: As long as it is confined to that, you have the same objection and the same ruling of the Court each time and you may have your exception.

Mr. Fitzhugh:

Q. Now, Mr. Huley, Mr. R. A. Crawford is a director in the Lone Star Gas Company, is he not?

A. Yes, he is a director of the Lone Star Gas Company.

Q. And likewise in the Lone Star Gas Corporation?

A. Yes, he is.

Q. The County Gas Company?

A. Yes, he is a director of the County Gas Company.

Q. And the Dallas Gas Company?

A. Yes, that is correct.

Q. How about the Texas Cities Gas Company? I don't believe he serves in that company, does he?

A. No sir, he is not a director of the Texas Cities Gas Company.

Q. I believe you say Mr. Denning is also a director of the Lone Star Gas Company?

A. Yes, he is a director of the Lone Star Gas Company.

Q. Is he a director of the Lone Star Gas Corporation?

A. Yes, he is.

Q. And likewise County Gas Company?

A. Yes, he is a director of the County Gas Company.

Q. And in the Dallas Gas Company?

A. That is correct.

[fol. 170] Q. And in the Municipal Gas Company?

A. Yes, he is a director of the Municipal Gas Company.

Q. And in the Texas Cities Gas Company?

A. Yes, he is a director of the Texas Cities Gas Company.

Q. Now, Mr. Karl F. Griffith, I believe you say, is a director of the Lone Star Gas Company?

A. Yes, he is a director of the Lone Star Gas Company?

Q. And he likewise serves in the Lone Star Gas Corporation as a director, does he not?

A. Yes, he does.

Q. And in the Texas Cities Gas Company?

A. He is a director of the Texas Cities Gas Company, yes.

Q. Does he serve in any of the other affiliated companies — on the board of directors, I mean.

Mr. Griffith: You refer, Mr. Fitzhugh, to the affiliated companies that are parties signatory to the purchase and sales contracts introduced here in evidence?

Q. Yes.

A. No, sir; I think that is all of the companies, covered and made a party to these sales contracts.

Q. Mr. Griffith, however, is general counsel for account of all of these companies?

A. Yes, he is, with the exception that he is not general counsel for County Gas Company or Dallas Gas Company.

Q. Now, in the case of Mr. R. E. Harding and Ben E. Keith, I believe they serve on no other company except the Lone Star Gas Company?

[fol. 171] A. That is correct; they are directors of the Lone Star Gas Company only.

Q. Now then, Mr. Huley, it is not your purpose, is it, to give the idea to the jury that all these contracts here were arrived at through arms length bargaining?

A. Yes, I would say exactly that. That those contracts were passed on by the respective boards of directors for each company involved, and to that extent they were arrived at——

Q. Do you mean to say, Mr. Huley, that the same results would have been reached if the Lone Star Gas Company had been dealing with somebody in no way connected with it?

A. Yes, I do mean exactly that.

Q. You don't think Mr. Denning of the Lone Star Gas Company would be influenced by Mr. Denning also being a member of the Municipal Gas Company directorship?

A. I don't believe Mr. Denning signed either of the contracts I mentioned.

Q. He serves on the board of directors in each company?

A. Yes.

Q. And he votes as to the policies of each company?

A. Yes.

Q. Don't you think his interests in one company would influence his interests in the other company?

A. No sir, I don't think that at all.

Q. You don't think that?

A. No sir, I don't.

[fol. 172] Q. You think under those circumstances, Mr. Denning would have the same ideas regarding these contracts as he would if he were in no way connected with but one of the companies?

A. I think Mr. Denning would be extremely fair and have no partiality with respect to these contracts. Those rates have been in existence for some time and are regarded as fair by both companies.

Q. You don't think Mr. Karl F. Griffith, as general counsel for both companies, would give ideas to one company, or advice, which would be detrimental to the sister company, do you?

The Court: I can understand, Mr. Fitzhugh, that it might be embarrassing to Mr. Griffith, as opposing counsel here, to object to that question which would however call for a conclusion of the witness as to what Mr. Griffith might do, and also in addition to calling for a conclusion, would be simply an argument with the witness.

Q. All right.

Mr. Griffith: I appreciate the Court's observation, but I have no objection in the world to the witness testifying as to that matter.

Q. You have been present, have you not, Mr. Huley, at meetings of the boards of directors of the Lone Star Gas Corporation?

A. Yes, I have.

Q. Isn't it a fact that that corporation selects and con-

trols the selection of the boards of directors of companies affiliated with it?

[fol. 173] A. Naturally the Lone Star Gas Corporation would have that right, owning the majority of the common capital stock of the affiliated companies.

Q. And any time a director in one of the affiliated companies did not act so as to meet the wishes of the Lone Star Gas Corporation he would be immediately let go from that Board of directors of the affiliated company, wouldn't he?

A. I don't know that actually has ever happened. I could not answer that, because those changes have not been made. Evidently the directors have satisfied the board of directors of the Lone Star Gas Corporation, because no such changes have been made.

Q. But the power exists to make the change?

A. Oh, there is no question about that.

Q. Now, take your Exhibit No. 4, and turn to your first page under your first item, gross revenues, where you show gas sales in an amount exceeding Seven Million Dollars for each of the two years there shown.

Mr. Griffith: You mean on the second sheet?

Q. Yes, the first inside sheet. To whom were the gas sales, represented by these figures given in your exhibit; to whom were these sales made?

A. They were made to the several distribution companies that Lone Star Gas Company furnishes gas to, for both domestic and industrial purposes, and also includes main line sales made by the Lone Star Gas Company, and also includes [fol. 174] the revenues from sales made to compressor stations and gasoline plants—that is, for fuel purposes.

Q. Now, where you allude to sales made to distributing companies you are talking about the affiliated companies that we have just been talking about in every case except in the case of the Gainesville Gas & Electric Company at Gainesville, and the Waxahachie Gas Company at Waxahachie.

A. And the Southwestern Light & Power Company at Temple, Oklahoma, would also be another exception.

Q. Speaking only now of the Texas business, Mr. Hulcy, the Gainesville Gas & Electric Company and the Waxahachie Gas Company are the only two companies that the Lone Star Gas Company sells to, except the other affiliated companies already mentioned?

A. Yes, at this time and covered by this particular exhibit. That also would be true as to a part of the year 1931 for the reason that Abilene and Cisco, during a portion of the year 1931 were sold at the City Gate, but as of October 1, 1931, the properties at both Abilene and Cisco were acquired by the Community Natural Gas Company and so from that time on those sales were made to the Community Natural Gas Company.

Q. Now what portion of gas sales is attributable to domestic sales, and what part to industrial sales?

A. If you will give me just a minute; if I can get it for you.

The Court: Are you speaking of what's shown on this page?

Q. Yes, for each of the years; I meant 1932 and 1933.

[fol. 175] A. Well, this exhibit covers the twelve months ended June 30, 1933, and not the calendar year. For the year 1932, the Industrial Sales by the Lone Star Gas Company amounted to \$2,176,552.45. Therefore, the difference between that amount and the total gas sales shown would be from domestic gas sales if sold at 32 cents per 1000 cubic feet. This schedule does give effect to a 32-cent Gate rate.

Q. Which rate incidentally has never been charged?

A. No, sir; it has not. It is merely giving effect to the rate ordered by the Railroad Commission and set out in their opinion and order.

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Q. While you have your working papers, Mr. Huley, I wonder if you could give us the separation as to domestic and residential gas sales for the year 1931?

A. You mean industrial and domestic.

Q. Yes, sir. I mean by that, as actually sold.

A. As actually sold, and not giving effect to a 32-cent rate?

Q. Yes.

A. All right. For the year 1931 the industrial gas sales by Lone Star Gas Company amounted to \$2,445,681.55. The domestic gas sales by Lone Star Gas Company amounted to \$6,818,957.90; the two making a total of \$9,265,639.45; that being the total gas sales for the year 1931.

[fol. 176] Q. Now, what were the actual domestic sales in 1932—for the year ended December 31, 1932?

A. The actual domestic sales for the year ended December 31, 1932 amounted to \$6,653,160.92.

Q. And do you have the same figures for 1933?

A. Yes, sir. The domestic sales by the Lone Star Gas Company for the year 1933 amounted to \$5,583,008.07; the industrial gas sales amounted to \$2,105,716.03; making a total of \$7,688,724.10.

Q. You have the same figures for the year ended March, 1934, and April, 1934?

A. I will have to make a calculation here, because I have the industrial gas broken down further for those periods, than I do for the other. It will not take me but a minute, and I will give it to you. (Witness takes time to figure.) All right; for the twelve months ended March 31, 1934 the domestic gas sales by Lone Star Gas Company amounted to \$5,755,413.54; the industrial gas sales by Lone Star Gas Company amounted to \$2,170,861.34; making a total of \$7,926,274.88. For the twelve months ended April 30, 1934, the domestic gas sales by Lone Star Gas Company amounted to \$5,732,140.97; the industrial gas sales amounted to \$2,189,305.82; making a total of gas sales of \$7,921,446.79.

Q. Now, during those periods, Mr. Huley, the industrial revenue seemed to be fairly constant; isn't that true?

A. What particular periods are you talking about?

[fol. 177] Q. For all the periods you have given us these figures on—for the years 1931, 1932, 1933, and the periods ended March 31, 1934 and April 30, 1934?

A. Well, 1931, the industrial sales amounted to \$2,445,000.00 plus; for 1932, \$2,176,000.00 plus; for 1933, \$2,105,000.00 plus; for the twelve months ended March 31, 1934, \$2,170,000.00 plus; and for the period ended April 30, 1934, \$2,189,000.00 plus. There is a spread of around \$340,000.00 between the high and the low of those respective periods.

Q. Now, the domestic shows considerable more fluctuation, does it not?

A. Yes, sir.

Q. Dropping from 1932 to 1933 by over a million dollars?

A. Yes, sir; something in excess of a million dollars.

Q. Why would you say that happened?

A. Well, that very likely is caused from a number of reasons. One of the main reasons is economic reasons; loss of customers served, and that is one of the major reasons; and the weather, of course, had something to do with it also, I would say.

Q. How much did the weather have to do with it? Wasn't that the main thing?

A. No, sir; it certainly was not the main thing. There is quite a difference in the number of customers served—that is domestic customers served by the several distribution systems to which the Lone Star Gas Company served gas [fol.178] for domestic purposes between 1932 and 1933.

Q. Do you have the number of customers, or the average number of customers for these periods?

A. I think that I have those somewhere here. What periods do you want?

Q. 1931.

A. In the year 1931, the average number of domestic customers furnished by Lone Star Gas Company was 209,615; for the year 1932 was 207,888.

The Court: Just a minute, gentlemen; we don't want to go too far afield here, and I don't see the materiality of the number of customers served.

Mr. Fitzhugh: The materiality is this: they have submitted here operating statements over three years. We want to show whether there is any abnormality in those years as to the number of customers, the temperature for those years, or business conditions, that make those abnormal for any reasons.

Mr. Griffith: This witness has only testified as to matters of fact which have actually happened as reflected by the books. It becomes immaterial whether there is any abnormality in the situation; it becomes immaterial whether the number of customers was one figure, or some other figure; it becomes immaterial whether the winter was warmer or colder. What the witness has done in here is to set forth [fol.179] what has actually happened, as contrasted with what might happen.

Mr. Fitzhugh: And the reason he has done that is that he wants this jury to decide what the proper operating revenues and expenses will be for the Company in the future. If for any reason they have introduced exhibits for these abnormal years that are not a fair criterion for future prediction we want to point that out. I have not asked the witness any questions but what he can answer.

The Court: You might sit here and ask questions from now to Christmas, but if they are not material, what is the use of it. What difference does it make in this case whether

he served one hundred thousand or two hundred thousand customers.

Mr. Fitzhugh: I would like to know what the number of customers are for these years.

The Court: What difference does it make?

Mr. Fitzhugh: We are leading up to show that the statements introduced here for the years 1931, 1932, and 1933, that those were depression years and abnormal.

The Court: Do you have to ask him how many customers they had for you and and this jury to understand that those were depression years?

Mr. Fitzhugh: Yes.

The Court: We all know what happened during 1931 and '32, and one of the higher courts said just the other day that [fol. 180] they would take judicial knowledge of it. I want to save time and cut out this stuff that does not belong in here.

Mr. Fitzhugh: If you will let him state these figures, I think I can show the materiality of it.

The Court: He stated it for two years. Show the materiality of that before you go further.

Mr. Fitzhugh: We just got up to the year where the sudden drop took place.

The Court: I will accomodate you, and let you go ahead then with the next one.

Mr. Griffith: We object to the testimony on the ground that it is immaterial and irrelevant.

The Court: All right. Let it go one more year.

Mr. Griffith: Note our exception.

The Court: All right.

Q. I want to know, Mr. Huley, the average number of customers for the year 1933?

A. The average number of domestic customers served by the Lone Star Gas Company during 1933 was 202,472.

Q. And that is 202,472, as compared with 207,888 for the previous year?

A. That is correct.

Q. But in that period of time revenues dropped from \$6,653,160.00 plus to \$5,583,008.00?

A. You have reference to domestic revenues?

[fol. 181] Q. Yes.

A. That is correct.

Q. Would the decrease in the number of domestic consumers as between those years account for the difference?

A. No, sir; it would not account for all that difference.

Q. What other reasons—

A. Well, I think the general economic conditions, in addition to loss of customers, enters into it also.

Q. You mean besides the number of customers falling off, each customer used a little less gas?

A. Yes, sir; they did.

Q. Do you have any figures for these years for the degree days deficiency?

The Court: What is that?

Q. Degree days deficiency.

The Court: I don't understand you.

Q. Degree days deficiency. It is a term used by them. What do you mean by that?

A. I haven't used it, Mr. Fitzhugh.

Q. Do you know what it means?

A. Degree days deficiency?

Q. Yes.

A. Probably I can offer an explanation. "Degree days of deficiency", we might call it the yardstick of measurement of weather conditions as affecting heating requirements. We assume, and go on the assumption, that when [fol. 182] the temperature falls below 65 degrees, then it will be necessary to have some heat in order that the person or persons might be comfortable. For instance, on any particular or given day, say, that the average temperature for that day was 50 degrees; that is the average or mean of the high and low; then that mean temperature of 50 degrees deducted from 65 degrees would give a figure of 15 degrees, or what you would call 15 degrees, day deficiency. Now, the accumulation of those daily degree days of deficiency into the totals for the year are the yardsticks of measurement that we use in the natural gas business, and in any other fuel business it would be used also to cover the heating requirements. Have I made that clear?

Q. Yes, sir; that is exactly what I wanted to find out. Now, can you give me your yardstick for the years 1931, 1932 and 1933?

Mr. Griffith: We object.

The Court: Yes, sir; the objection is sustained. That hasn't a thing to do with this case.

Mr. Fitzhugh: It certainly is material to show that the year 1933-34 was an unusual year from a temperature standpoint, and this is the way to show that.

The Court: The objection is sustained; you can have an exception.

Mr. Fitzhugh: Note our exception.

The Court: All right.

[fol. 183] Mr. Fitzhugh: We don't care why it happened; we simply want to show it did happen.

The Court: He has already told you that.

Mr. Fitzhugh: Does your Honor hold that we can't show the degree days of deficiency by years?

The Court: I don't know what I will hold when you get to it.

Mr. Fitzhugh: If we can't show it now, we can't show it at all.

The Court: I can't see what it would have to do with it now. Maybe you will clear the clouds up later and can show it then, I don't know.

Q. Now, for the year 1931, Mr. Hulcy, how much of the \$6,818,957.90 domestic sales for that year took place in the state of Oklahoma?

A. Well, I can't tell you.

Q. How much took place in the state of Texas?

A. I couldn't tell you. I don't have that sum divided.

Q. Your records do show that, don't they?

A. Oh, you would be able to dig it out of the records in the Dallas office.

Q. You would be able to dig it out, too?

A. Yes, sir; certainly it could be dug out.

Q. And it could for every other year down to the present time, could it not?

A. The amount, or proportion, of this gas for 1931, or for [fol. 184] 1932, or 1933, that was sold in the state of Oklahoma could be arrived at. You would have to go back to the detail records, and the records are not kept in that manner.

Q. But you could get that amount to the exact penny, in dollars and cents?

A. For sales in Oklahoma, yes. It might require going back into a lot of detail to get it, but it could be done.

Q. The same split could be made between this state and Oklahoma in the matter of industrial gas sales for that year?

A. You mean sold within each of the two states?

Q. Yes, sir.

A. That is right; that is basing on the sales at the point where the sales were made.

Q. The books of the Company also show data from which you could make a separation as to book value or book cost of the properties in the states, isn't that true?

A. I think, generally speaking, that is true, yes, sir.

Q. And similarly, you can make a division as between the two states for gas purchased and production expenses?

A. That is correct.

Q. And the same way you could make a division as to gathering and transmission expenses?

A. Transmission expenses?

Q. Yes, sir.

A. No, sir; you could not.

Q. Why not?

[fol. 185] A. Without making allocations, you could not.

Q. You could do that?

A. Oh, yes. You could make an allocation on anything.

Q. You could make a reasonable allocation?

A. That depends on how reasonable you think it would be; but it would be an allocation.

The Court: Let me ask a question. What do you mean by "allocation"? Is that an estimate?

A. An estimate is exactly what it would be.

Q. A division.

The Court: A division based on an estimate, as I understand it?

A. That is correct; it would be an estimate.

Q. Well, now, line "G", line "H", and line second "H" are three lines which you say originate in Oklahoma and run down into Texas?

A. That is correct.

Q. Those are transmission lines, are they not?

A. Yes, sir; they are.

Q. Now, wouldn't it be a fairly simple problem, Mr. Hulcy, from an accounting standpoint, to make a segregation of the transmission expenses that are properly to be

attributed to Texas business as distinguished from these that belong to Oklahoma business of the Company?

A. It would still be an allocation regardless, because the expenses are not kept on the Oklahoma part all the way [fol. 186] through, and on the Texas part all the way through. It happened that on those particular lines you could get nearer doing it than on some of the others; but it would still be an allocation.

Q. Just because you would have to use an allocation does not mean there could not be a division?

A. Oh, no; a division could be made.

Q. The main thing about the division would be to find some reasonable basis for your allocation?

A. Yes, sir; but it would still be an allocation.

Q. If you had a reasonable basis for allocation, your division might come out fairly accurate?

A. Well, things that are reasonable to one person are unreasonable to another.

Q. I understand that, Mr. Huley.

A. I might be able to work out something entirely satisfactory to me, but that would be unreasonable to you, and vice versa.

Q. But no where in any of these exhibits have you attempted by any method to make a separation as between the Oklahoma and Texas business of the Company?

A. No, sir; I have not.

Q. Do you claim that your Company does some interstate business?

A. Yes, sir; I think they do. As I understand interstate and intrastate business they do.

[fol. 187] Is there any sizeable amount of interstate business?

A. Yes, sir; I would say interstate business is in a sizeable amount.

Q. Do all of your exhibits, 4 to 14, include the business of the Company which you term is interstate business?

A. Yes, sir; they do.

Q. Would it be possible, Mr. Huley, for you to make a segregation of the Operating Expenses and the Operating Revenues of the Company so as to separate the business which is interstate from the business which is intrastate?

A. Well, sir; it might be.

Q. But you made no attempt to do that?

A. Well, I have not completed anything like that yet,

Mr. Fitzhugh. It might interest you to know that I am presently working on something of that kind, but it has not been completed. I don't know what it will look like or how reasonable it will be.

Q. Will we be favored in the future with the results of your labors, Mr. Hulcy?

A. I couldn't tell you about that, Mr. Fitzhugh.

The Court: Have you any idea when you will be through with it?

A. Well, it depends on when I get through here, Your Honor, just how soon I can get to it.

Q. In this Exhibit No. 4 the deductions from Gross Revenues detailed on that sheet are actual expenses of the [fol. 188] Company for the period covered, are they not?

A. Yes, sir; they are, and as reflected by the Company's books.

Q. And you mean by that that they represent sums of cash money paid out by the Company?

A. Yes, sir; I do. Now, with particular reference to canceled and surrendered leases, I want to make it clear: They do represent cash sums of money expended by the Company perhaps in some period other than this accounting period, but they are now being written off, and is the equivalent of the expenditure of cash money. With that exception, all those items represent cash money.

Q. In the case of canceled and surrendered leases, some of the amounts appearing as deductions from Gross Revenues in this statement, you say may have been sums actually used up in prior periods—maybe years ago?

A. No, sir; I would not say sums actually used; but a cash expenditure was made for the asset or property, in this accounting period, it has been determined that they should be canceled,—

Q. Yes, sir.

A. —and surrendered; but they do represent cash money that has been expended.

Q. And an asset used up in part, some parts of which were used up years ago?

A. Well, any part of these leases was not used up at any time before they were actually surrendered.

[fol. 189] Q. I understand that; but just answer my question. This sum for Surrendered Leases for December 31, 1932, is in the amount of \$255,000.00 plus?

A. Yes, sir.

Q. It represents the cancelling off on the books of assets which have been used up in part, and parts of which were used up some years back?

A. No; I can't agree that any parts of those assets were used up in other periods than this accounting period. The lease was there on the day before it was cancelled and surrendered in exactly the same shape it was the subsequent day the Company acquired it.

Q. These represent leases that have never had any production?

A. Yes; these are from undeveloped leaseholds.

Q. And the surrendered part does not mean leases that the owners had production on, but had ceased production?

A. No, sir; it does not cover that class of leases.

Q. In this particular year ended December 31, 1932, it was simply a matter of policy with the Company whether they should cancel and surrender leases in the amount of \$255,000.00; they might have made it a half million or a million, if they had cared to?

A. If they wanted to write off all the property they had, it could be done.

Q. It is more or less a matter of operating policy with them, to regulate the amounts more or less constant by years?

[fol. 190] A. No, sir; it is not, Mr. Fitzhugh. That is determined by people that are expert in their knowledge about the probability of securing production from gas leases, and they are written off when the term of the lease expires, or at some delayed rental payment period when it is determined that the lease is not now worth the payment of additional rental on it.

[fol. 191] Q. So that this item might be very large in some years and very small in others?

A. Well, that may be true; yes, sir.

Q. Now, then, of the two hundred and fifty-five thousand for the year 1932, what part of that was for delayed rentals?

A. I can't tell you, Mr. Fitzhugh. I would take an examination of the detailed records in the Dallas office for me to tell you. I don't have that information with me.

Q. Do you have it approximately there?

A. No, sir; I could not tell you.

Q. Well, for that same year, 1932, passing on down that

same column to Federal income taxes, you show an amount of \$208,202.84. That is the computed Federal income tax?

A. Yes, sir; that is the computed or calculated Federal income tax.

Q. That is not the amount, Mr. Huley, that was actually paid by the company for that period?

A. No, sir; it is not.

Q. What was the amount actually paid by the company?

A. Of course, the amount of income tax paid by the company is not divided between public service operations and non-public service operations. The Federal tax as shown on the report for the twelve months ended December, 1932, for the Lone Star Gas Company was \$234,312.46.

The Court: That was actually paid?

A. That was the accrual actually paid to the Lone Star Gas Corporation. You understand that we filed consolidated tax returns, as was allowed by the law, for all years [fol. 192] up until and through 1933. That has now been changed. A consolidated return was made for all the companies, just the same as if they were one, and that was the part billed by the Lone Star Gas Corporation to the Lone Star Gas Company for their part of the tax.

Mr. Griffith: Under the new internal revenue Act consolidated returns are not permissible?

A. That is true. Each corporation must make an individual return.

Mr. Stout: That actually went into effect just a few days ago?

A. Yes, sir, as of January 1, 1934.

Q. If I understand you, Mr. Huley, the sum you just gave was paid by the Lone Star Gas Corporation for the year 1932 for the benefit of the Lone Star Gas Company?

A. That would be substantially correct, yes.

Q. And was that sum actually paid to the Lone Star Gas Corporation by the Lone Star Gas Company?

A. Yes, sir; it was, or else credited to their account.

Q. How much was the 1931 figure for the same thing?

A. For 1931 it was \$296,954.64.

Mr. Griffith: That is the amount of tax actually paid?

A. That is correct; yes, sir—actually paid or credited to the Lone Star Gas Corporation as Federal income tax.

Q. Let's see if I understand you about that, Mr. Hulcy. Do you mean that this two hundred and ninety-six thousand dollars for the year 1931 was actually paid to the [fol. 193] Federal Government by somebody for the Lone Star Gas Company?

A. I didn't say for the Lone Star Gas Company. The Lone Star Gas Corporation made a consolidated income tax return for all of the companies included in the Lone Star group.

Q. Yes, sir.

A. For a certain sum of money. Now, then, they didn't divide that and say that "A certain proportion of this is for the Lone Star Gas Company" or "A certain proportion of this is for the Dallas Gas Company", but they said "This is the amount for the Lone Star Gas Corporation and its affiliated companies". Of course, that would apply to the companies in which the Lone Star Gas Corporation owned in excess of ninety-five per cent of the common capital stock. Then that is the amount in 1931 that was accrued on the books of the Lone Star Gas Company as a credit to the Lone Star Gas Corporation.

Q. Well, who fixed the amount that the Lone Star Gas Company should pay as a part of the consolidated tax to be paid for all these corporations—who fixed that amount for the Lone Star Gas Company?

A. Well, I think that division, Mr. Fitzhugh, was determined from an individual tax return that was made up by the employees of the Lone Star Gas Company.

Q. Didn't the management of the Lone Star Gas Corporation determine what amount the Lone Star Gas Company should pay?

A. No. I have forgotten now just how it was determined; I am not in position to say.

Q. Well, didn't the operating officials of these companies [fol. 194] just to get together and decide how much each company should pay?

A. No, sir; they didn't. I don't know that the executive management, so far as that is concerned, ever knew anything about it. That is a matter that is usually handled by the Secretary's or the Treasurer's office. The other executive officers are not particularly interested in just how an allocation or division of Federal income tax is made.

Q. Well, who decided for the Lone Star Gas Company how the thing should be handled on the books? Did you?

A. No, sir; I didn't.

Q. Who did?

A. I could not tell you, Mr. Fitzhugh. Perhaps Mr. Dyer or Mr. Cobb did.

Q. Do you know what caused them to decide upon this amount of two hundred and ninety-six thousand dollars in 1931—how they did determine that amount?

A. Well, very likely that was determined from the individual return made up by the Lone Star Gas Company, which was included in the consolidated group of the Lone Star Gas Corporation and its affiliated companies. Now, whether that was the exact amount of the allocation I don't know.

Q. The law don't bind you on the way you submit your individual return?

A. How is that?

Q. I say, you are not bound by the law on how you shall submit your individual return?

[fol. 195] A. I don't know just how you mean. Are you talking about me personally?

Q. No; I am talking about the return for the Lone Star Gas Company.

A. No, sir. It was purely a matter of record, and it never went to the office of the Collector of Internal Revenue.

Q. Then there is no amount that is computed on the individual return that is governed by the provisions of the law, is there?

A. Well, of course, any individual return that was made up for record purposes, Mr. Fitzhugh, would be calculated in a manner just the same as if it were filed later.

Q. Well, you know where there is a consolidated return made by a bunch of companies, such as yours and affiliated companies—

A. Yes, sir.

Q. —and where you make a consolidated return—

A. Yes, sir.

Q. —that the individual companies do not have to do anything to comply with the law in making a separate report?

A. No, sir, but they usually do that. I know they do in the Lone Star group; each and every company makes an individual tax return, just as if it were going to be filed.

Q. So long as you pay the Federal Government the amount that is required by it on a consolidated report, it does not make any difference to the Federal Government how you divide up the amount of the tax?

A. Well, the Federal Government—they are interested in [fol. 196] that to a certain extent. You couldn't go in and put it against some weak sister and leave them holding the sack if they didn't pay it; they are interested to that extent. But, generally speaking, so long as the tax is paid they don't care how it is divided, if it is paid.

Q. Now, what was the amount of the tax for 1933?

A. The total Federal tax as shown on the report for 1933 for the Lone Star Gas Company is \$173,558.25.

Q. However, in your Exhibit 6, which covers the same period, what do you show for Federal income tax?

A. Exhibit 6 covers 1932, doesn't it?

Q. Yes; I meant 1932.

A. The calculated Federal income tax for 1933 is shown to be \$343,835.27.

Q. That is in your exhibit, Mr. Huley, where you computed the Federal income tax, you show three hundred and forty-three thousand dollars for the tax for 1933, whereas the company actually paid, even on the basis that you say they figured their tax, \$234,000.00?

A. Whatever that amount was I read to you there, Mr. Fitzhugh.

Q. A difference of over a hundred thousand dollars?

A. If it was two hundred and thirty-four thousand, it would be in excess of a hundred thousand dollars.

The Court: Wait a minute. I am interest- in that I wish you would see what they did pay in 1932.

A. \$234,312.46.

The Court: All right.

Q. And it is the same way in all the other exhibits from [fol. 197] that date on through, isn't it, Mr. Huley?—in each case the computed amount appearing in your exhibit is materially above that actually paid by the company?

A. I would say that it would be; yes, sir. This amount is calculated on the finding set out in this report.

Q. What justification do you have, Mr. Huley, for using figures so highly in excess of what the company actually has paid?

A. A good portion of that, Mr. Fitzhugh, is due to losses sustained on non-public service property, gasoline plants, oil properties, operating at a loss, which is claimed by the company for tax purposes, but it is not included in any of these exhibits, and the amount of income tax that has been calculated in each of these exhibits is based upon the actual amount shown herein as available for depreciation and return, then a calculation made for depreciation at five per cent of the rate base, then after that deduction for depreciation, the remainder being calculated at the prevailing rate, nothing has been taken off for interest.

Q. What is the amount that the Government allowed you for depreciation?

A. The Government allows varying rates; I don't know just what amount they are allowing now, because we are not closed up on depreciation for a few years, so I could hardly say just what the depreciation rate is.

Mr. Griffith: You mean there is still Federal income tax liability outstanding and undetermined?

[fol. 198] A. That is quite true; yes, sir; and it has been for a period of time going back further than any exhibit I have sponsored in this case, so I can't tell you just what the income tax liability will be, because they are still open.

Q. You mean your company now has a case pending with the Government to determine the amount of income tax?

A. Yes, sir; we certainly do.

Q. And until that is closed up you won't know what the income tax is?

A. I can't know what the final liability will be.

Q. Well, as a general thing, in making out your return for Federal income taxes to the Federal Government, you are allowed to figure depreciation on at least a five per cent rate, aren't you?

A. No, sir; you are not; no, sir. And I can tell you now, Mr. Fitzhugh, that things have changed and are changing with reference to depreciation allowances that the Government is allowing.

Q. Well, do you mean that they are allowing a higher rate?

A. No, sir; I don't. I mean that in newspaper stories it has come out—that is, in the regulations under the Federal income tax law. We are all familiar, I think, with the attitude of Congress at this general session with reference to Federal income taxes and depreciation allowances. The

Committee in hearing the matter wanted to just arbitrarily reduce depreciation allowances by anywhere from twenty- [fol. 199] five to fifty per cent. The Treasury Department in effect told them not to do that, that they would take care of the matter through the issuing of the regulations. Now it has been changed entirely around. Under the old law you could claim depreciation, and unless the Treasury Department could prove that it was materially wrong they had to allow it; but it has been changed under this new law, and the burden of proof is on the taxpayer and he must satisfy the Treasury Department in all cases, and the regulations governing and covering it are pretty strict.

Q. Now, in accordance with what was the old law you were allowed to make a claim in 1931, weren't you?

A. Yes, sir; you could claim any amount you wanted to.

Q. Well, what did the company claim in 1931?

A. For depreciation?

Q. Yes.

A. The rates were varying, Mr. Fitzhugh. I could not tell you what they were now.

Q. Can you give us an average or an approximation?

A. No, sir; I would not attempt to do that at all.

Q. Well, how, in computing your Federal income tax, if you didn't know what your depreciation rate was, how could you compute it?

A. Well, sir, I used five per cent.

Q. That was wholly arbitrary on your part?

A. No, sir; I would not say it was wholly arbitrary. On our property depreciation has been claimed and recorded on the books at twelve per cent; compressor stations have [fol. 200] been at rates varying from four or four and a half to five per cent; well lines and gathering lines have been at certain rates; transmission lines at other rates. But I have used, not so much because of what was claimed on the books, a rate of five per cent for depreciation, but from my understanding from engineers supposedly competent and capable of knowing, that something about five per cent was a fair rate, and so that is the reason for my using the rate of five per cent.

[fol. 201] Mr. Fitzhugh:

Q. Turn to page 5—I mean Exhibit 5, Mr. Huley, your second page inside the cover:

A. Yes, sir.

Q. Where you show a statement of revenues, expenses, and amount available for depreciation and return, twelve months ended December 31, 1931.

A. Yes, sir.

Q. On that sheet you show Federal income tax in the amount of \$302,302.41.

A. Yes, sir.

Q. How did you find that amount?

A. That amount was arrived at by taking the gross income in the amount of \$4,908,024.24 and deducting therefrom depreciation calculated at a five per cent rate on the actual cost of the public service property as reflected by the exhibit, the remainder being calculated at a rate of twelve per cent.

Q. Now, what was the amount of the deduction for depreciation?

A. Well, I don't have it here. I will have to calculate it, Mr. Fitzhugh. (Witness makes calculation.) The amount used as a depreciation and depletion deduction was \$2,388,837.48; that amount deducted from \$4,908,024.24 leaves [fol. 202] \$2,519,186.76 as being subject to Federal income tax. That amount at a 12 per cent rate amounts to \$302,302.41.

Q. Now, turn to your Exhibit No. 13, page 16.

A. Page 16?

Q. Yes, sir; which page shows a Federal income tax calculation for twelve months ended December 31, 1931, being the same period covered by your Exhibit No. 5.

A. Yes, sir.

Q. In that exhibit you show an amount for interest?

A. Yes, sir.

Q. Does that amount represent an amount actually paid by the Company for that year as interest?

A. Yes, sir, paid and/or accrued.

Q. Now, why wouldn't that be properly deductible?

A. Well, I don't feel that it would, Mr. Fitzhugh. I don't think that interest has any place in a rate case hearing at all; and, in fact, the only orders that I have ever seen did not take interest into consideration.

Q. All right; but I mean when you are computing the amount that would be payable to the Government for Federal income tax you are entitled to make a deduction for interest, aren't you?

A. Yes, sir, you are.

Q. Just the same as you are for depreciation?

A. That is quite true.

Q. Now, in making your calculation you would make the [fol. 203] deduction for depreciation only, and leave out the deduction you were entitled to for interest. Why did you do that?

A. I didn't include the interest in this deduction.

Q. And I say why didn't you do it?

A. Well, the reason—

Q. The Government allows it, doesn't it?

A. Yes, sir, the Government allows interest all right, but interest at any rate would not be applicable to public service property.

Q. Certainly a very major portion of it would be.

A. Perhaps it would—perhaps it would; but I don't feel that a calculation for interest has any place in arriving at a Federal income tax. There isn't any question about it, but what we pay Federal income tax at the prevailing rate on this amount of net profit.

Q. All right. Now, Mr. Huley, you show for this year an amount for interest charges of \$1,017,381.94. Tell me what part of that amount would be for non-public service property.

A. I couldn't tell you, sir.

Q. It would be a very unsubstantial amount, wouldn't it?

A. It would be what?

Q. It would be a small amount, wouldn't it?

A. For non-public service property?

Q. Yes, sir.

A. No, I wouldn't say that, Mr. Fitzhugh; I wouldn't say that. I would say a majority of it would be public service property.

[fol. 204] Q. Well, at least a million dollars of that is public service property, isn't it?

A. I wouldn't say that, no, sir.

Q. Does this amount for interest cover the payments made by the Lone Star Gas Company to the Lone Star Gas Corporation as interest on a note made by the Company to the Corporation?

A. Yes, sir, it does include the amount that was paid and/or accrued by the Lone Star Gas Company in favor of the Lone Star Gas Corporation.

Q. Wasn't all that money, Mr. Huley, borrowed from the Corporation to build public service property?

A. I wouldn't say it was all public service property. I think there were some gasoline plants built.

Q. Well, what portion of the Company's property is non-public service?

A. Well, I can't tell you right now, Mr. Fitzhugh. It would take calculations, I will state, to determine that, and I don't have the information here available right at this time.

Q. Is it as much as five per cent of the property value?

A. I would have to check into it before I could tell you, sir.

Q. It is approximately that, isn't it?

A. I wouldn't admit that. I would have to check into it before I could tell you.

Q. Well, wouldn't 95 per cent of the amount that you [fol. 205] show for interest charges on page 16 of Exhibit 13 approximate the interest charges for public service property?

A. Mr. Fitzhugh, I couldn't tell you, sir.

Q. And wouldn't if you could, would you?

A. Now, anything that I can tell you, I will be very happy to do it; but then I don't want to commit myself to something I am not sure about.

Q. Well, you know from your Company's books, don't you—you know what the property of the Company is, don't you?

A. Yes, sir, I do.

Q. And you can't tell what portion of the property is non-public service?

A. No, sir, I can't without going to the books and finding out or checking further—that is, in the reports.

Q. Now, on page 39 of Exhibit 13 you assume for the purpose of your calculations on that page the 32 cent rate proposed in the order of the Railroad Commission?

A. Yes, sir, I do.

Q. At what amount, for the purposes of making your calculations, did you consider depreciation to be calculated?

A. In the exact amount as found and allowed by the Railroad Commission—namely, \$983,698.43.

Q. To state that as a percentage, it would be approximately 2.14, wouldn't it, of the rate base as found by the Commission?

A. Very likely it would be. The depreciation takes 2.09 plus the amount for depletion.

Q. In other words, in making these calculations——

[fol. 206] Mr. Griffith: Just a minute, Mr. Fitzhugh. He is making the calculation for you.

Q. Yes, sir, that would be 2 point about one three, I calculate here.

Q. In other words, for the purpose of making these calculations, you assume a depreciation rate of approximating 2 point one three or one four, as contrasted with the five that you assume in making the other calculations we have just referred to?

A. Yes, sir; yes, sir.

Q. Now, then, on page 39 for the twelve months ended December 31, 1931, what would your calculations have been, assuming that five per cent depreciation rate?

A. Well, I didn't base that, Mr. Fitzhugh, on anything other than the depreciation allowed and found by the Railroad Commission.

Q. Well, this tax amount is not based in any wise on any findings of the Railroad Commission, is it?

A. It certainly is based upon the amount of depreciation found and allowed by the Railroad Commission, and of which they said the Company would have as profit a tax has been calculated on that amount.

Q. Does the Federal government in requiring you to make out your returns for the purpose of calculating a Federal income tax require you to be bound by any findings of any State Commission?

A. I wouldn't be a bit surprised in this day and time but what they would.

[fol. 207] Q. Do they do it now?

A. Well, I don't know that they do. We haven't had any Commission——

Q. Don't you know as a matter of fact, Mr. Hulcy, that they have never done that?

A. I don't know whether they have or not.

Q. Mr. Hulcy, has the Federal government ever required your company to take a rate of less than five per cent—laying aside this case that you say is now pending—have

you ever in the past had to pay on a tax calculated on less than a five per cent depreciation rate?

A. Do you mean over all, or specific units of property?

Q. Over all.

A. Well, I don't know whether it has been less or more than that, Mr. Fitzhugh, but I know that in years past, particularly with reference to 1920, '21, and '22, the Government was liberal in some of their depreciation allowances, but even in the later years of 1925 and '26 you were not able to even claim—that is, as high rates as you had previously been.

Q. Have you settled with the United States Government for your Federal income tax for 1931?

A. No, sir, we haven't.

[fol. 208] Q. What is the Company claiming in its suit against the Government, for depreciation for that year?

A. Well, the Company doesn't have a suit against the Government, Mr. Fitzhugh. The Government hasn't accepted the Company's return, as you know.

Q. All right. In the controversy, whatever may be its status, what does the Company claim as its depreciation rate for that year?

A. I can't tell you, sir. I would have to get the Company's returns to tell you what they claim.

Q. Is it less than five per cent?

A. I don't know that it is; but I can't tell you now.

Q. At any rate, Mr. Huley, if you had calculated on page 39 for the year ended December 31, 1931, a depreciation rate—or depreciation at a rate of five per cent, you would have had no Federal income tax whatsoever, would you?

A. Well, sir, I don't know. I will have to make that calculation for you, and I will be glad to, if you wish me to. (Witness makes calculation.) Yes, Mr. Fitzhugh, there would have been some Federal income tax.

Q. In what amount?

A. Approximately fifty thousand dollars. I would say the amount shown, after giving effect to a 32 cent gate rate as being available for depreciation, depletion, and Federal income tax, and return, in the amount of \$3,765,160.24. Now, the depreciation and depletion calculation at a five per cent rate would have been \$2,212,330.87. That amount deducted from the total amount available would leave [fol. 208-A] \$1,452,829.37. The interest paid and/or ac-

crued for that period was \$1,017,381.94, and that amount at a 12 per cent rate would have been approximately \$52,000.00 plus.

Q. Now, for the year December 31, 1931, Mr. Huley, if the Railroad Commission's order had been in effect at that time, the 32 cent rate in effect, and if depreciation had been figured at the rate of five per cent, the amount would have been \$50,000.00 plus for Federal income tax due the Government—is that correct?

A. You mean here, if the 32 cent rate——

Q. Yes, sir.

A. Now, you have reference now just to the calculation of the Federal income tax, Mr. Fitzhugh?

Q. Yes, sir.

A. Yes, if the 32 cent rate had been in effect and the Company had been allowed to claim five per cent of the rate base allowed by the Railroad Commission as depreciation and depletion, or, in other words, \$2,300,000.00 plus, and deducted the total interest paid by the Company, then the Federal income tax would have been, in round figures, \$50,000.00.

[fol. 209] Q. Take any of these exhibits—well, say exhibit 5.

A. Yes, sir.

Q. What do you mean by the new business expense appearing as part of operating expense?

A. New business expense covers the cost of soliciting business; the advertisements that are paid for and carried in the newspapers and trade magazines and so forth in the name of the company, and is set out in detail on Exhibit No. 11, which was sponsored by me and explained this morning.

Q. Where is that—the second sheet?

A. Yes, it will be on the second sheet, in the amount of \$126,125.98.

Q. Now are the amounts that you show in Exhibit 11 for the various periods amounts that the Lone Star Gas Company spends directly or are those amounts that the distributing companies pay and charge back to the Lone Star Gas Company and which it accepts and then pays?

A. Well this amount here, Mr. Fitzhugh, includes all of the charges paid by the Lone Star Gas Company during these several accounting periods for all of the items set out

in the classified operating expense statement; which if there was during that particular period any joint ventures or advertisements, I would say, by and between the Lone Star Gas Company and certain distribution companies, and the costs of those advertisements were paid by the distribution companies and in turn billed to the Lone Star Gas Company, then that amount would be included in the [fol. 210] amounts I have set out here.

Q. Well, now, the Lone Star Gas Company has no customers except distributing companies, does it, except for some minor main line sales?

A. That of course is the big part, and that is all of the domestic business.

Q. You do sell, do you not, Mr. Huley, some small amounts of gas at farm taps on the main line?

A. Yes, we do.

Q. But for the most part, all of the gas you sell is to distributing companies as customers?

A. Yes, that is true.

Q. And I believe you say in Texas the only two exceptions as to your customers being affiliated companies, are in the case of the Gainesville Gas & Electric Company, and the Waxahachie Gas Company?

A. That is correct.

Q. Well now, is the new business expense that you have listed here representative of sums you have paid out to attach new distributing customers, or to secure new distribution companies as customers, or is it to attach new customers for the distributing companies in the cities you serve?

A. I would say it is to attach new customers to the distribution lines, and of course I feel confident the company did not expect through those advertisements to gain new distributing companies.

[fol. 211] Q. As a matter of fact, you have all the distributing companies attached to your lines right now that are adjacent to the territory served by your company?

A. That is correct, yes.

Q. So this new business expense is for the purpose of attaching new domestic consumers for the most part, isn't it Mr. Huley?

A. Not altogether. A substantial part of this as will be noticed in the classified expense, is new business solicit-

ing and commissions; it happens there is no commissions in it and it is all soliciting, however, in the amount of \$27,969.98; that is representative of the salaries paid to the employes in our industrial gas department. All of their time is given to matters in connection with the industrial gas customers, and they do not solicit business from or work on any domestic gas customers; so that is a substantial amount included in the \$126,000 that does not have anything to do with the domestic customers served by any distribution company securing its gas from the Lone Star Gas Company.

Q. What part of the amount of \$126,125.98 for the year 1931 represents sums accepted by the Lone Star Gas Company for amounts paid out by distributing companies?

A. I can not tell you that, Mr. Fitzhugh.

Q. Can you for any of the other periods?

A. No, sir, I can not. I do not have any of that information with me; I have taken the operating expenses as they appear on the subsidiary expense ledgers.

[fol. 212] Q. Where does the salary of Mr. Grant, and the men that work with him as publicity men, appear?

A. They appear as new business advertising salaries; they are in the advertising department.

Q. What are their duties?

A. Their duties are generally, I would say, in connection with the advertising copy placed by the company, as well as keeping up with any other newspaper work in connection with the affairs of the company, but principally advertising.

Q. During the course of this trial, Mr. Hulcy, I have noticed Mr. Grant has been here in the court room a part of the time.

A. Yes, he was:

Q. What was the purpose of his being here—was he here on advertising work at the time?

A. I don't know that he was here on advertising work.

Q. As a matter of fact, you use Mr. Grant most of the time, don't you, Mr. Hulcy, to obtain favorable publicity and in connection with political matters?

A. No sir, I wouldn't say that, and when you say favorable publicity, I don't know what you mean, but I do think Mr. Grant would be interested in seeing that the facts are contained in the newspaper stories that are written.

Q. Do you recall, Mr. Huley, when the trial was in progress at Fort Worth an advertisement appeared in the Fort Worth papers?

A. You don't mean as to the sixty cent gas?

Q. I mean the one that said something about every gas [fol. 213] bill containing so much for taxes.

A. Yes.

Q. That was one of Mr Grant's efforts, wasn't it?

A. You mean the advertisement?

Q. Yes.

A. Yes, I am sure Mr. Grant had something to do with that.

Q. Wasn't the purpose of that piece of advertising, Mr. Huley, to impress upon the gas users of the state that their gas bills were largely made up of taxes?

A. I wouldn't say it was largely that, but it was to acquaint the customers of the company with the fact that \$7.20 of each of the gas bills per annum paid by them was made up of taxes paid by the gas company, and that in other words, the gas company as to those amounts was in reality simply a collecting agency for the governing authorities which imposed the taxes and over which the company had no control.

Q. Wasn't the purpose of that to try to obtain and bring pressure to bear on the Legislature down here, in order to try and obtain the repeal of those tax laws that put a tax on your company and its operations?

A. You mean ad valorem taxes and things of that kind?

Q. No, I mean the gross receipts tax and other taxes which your company and its affiliated companies pay?

A. No, sir, I wouldn't say that, but it was to acquaint the customers of the company with what they were paying, and trying to get over to them that their gas company was nothing more than a mere collection agency, and that if additional taxes were placed on the gas company that the cost of it would finally rest with the customers, and we felt the customer should know that.

Q. Can you tell me, Mr. Huley, how much of the advertising shown for the various years on the second sheet of your Exhibit No. 11 can be separated and identified as covering advertisements of the sort just mentioned?

A. No sir, I can not tell you that; I have never been interested in it, Mr. Fitzhugh.

Q. How much of the new business expense, as it relates to advertising, has been only for advertising of the sort that would tend to point out to customers more intensive uses of gas or new gas appliances or anything else actually connected with the customer use of your product?

A. I could not tell you, Mr. Fitzhugh. I have not attempted to make any breakdown of the specific kinds of ads run in the newspapers and represented by these amounts of money.

Q. There is no separation on the books of the company, is there, Mr. Hulcy, for advertising or the salaries of your advertising department or your new business department, which separation is made on the basis of the purposes of the advertisements or the work done by the men?

A. No, sir; however, understand there is a complete file of all advertisements carried in the advertising department at Dallas and anybody who has the right to go in there can [fol. 215] see a copy of every advertisement that has been run, and satisfy themselves as to the kind that is run.

Q. Yes, we have seen some of those. You don't happen to have any of them with you?

A. No sir, I don't happen to; I didn't bring a single one.

Q. Now, is it your testimony, Mr. Hulcy, that all the new business expense by years, as you have shown on the second page of Exhibit 11 is for new business, or rather where the same applies to advertising, is for advertising which tends to increase the customer use of gas or to explain to customers the use of gas or gas appliances?

A. Well, I wouldn't—I would say that it is all advertising in there—Mr. Fitzhugh, it is either advertising that would explain certain things to customers—Understand, I do not see every copy of every ad that goes into the newspaper; they do not come across my desk, but the vouchers covering the payment for the cost of these various advertisements are paid and so classified in the accounts, and the statement I have here is what is shown by the books of the company and its records, representing the cost to the company of such advertisements.

Q. Now on the same sheet, Mr. Hulcy, you show under general expense, Management Fees and Expense, ranging from \$91,000 in the year 1931, to \$78,000 plus for the year ending March 31, 1934?

A. Yes, that is correct.

[fol. 216] Q. Now what do you say those management fees are paid for?

A. Well, I believe I stated while ago, Mr. Fitzhugh, that I would consider the principal and outstanding service rendered by the corporation to the company for this amount paid to them by the company, would be in connection with the assistance in financing, and in fact the advancing by the corporation to the company of substantial sums of money, at the present time the balance being \$17,600,000.00. In addition to that, the officers of the corporation do render to the Lone Star Gas Company certain legal services, aid them in the matter of general engineering services, general legal services and other executive aid and assistance; and general purchasing services is one of the main ones which I should have mentioned.

Q. Now who is it that does the work of furnishing to the Lone Star Gas Company on behalf of the Lone Star Gas Corporation the financial advice for the company?

A. The financial advice is usually given by three directors of the Lone Star Gas Corporation; the two principal ones, I would say is Mr. George W. Crawford, chairman of the board of the Lone Star Gas Corporation, and Mr. T. B. Gregory, a director and also a vice president of the Lone Star Gas Corporation.

Q. And who is the third one?

A. The third one is Mr. David E. Mitchell, a director of the Lone Star Gas Corporation, but I have particular reference to the first two, as being the principal ones in connection with the financial aid and assistance.

[fol. 217] Q. And the financing you refer to, I suppose, is this loan that has been made by the Lone Star Gas Corporation to the Lone Star Gas Company?

A. At different times money has been advanced by the corporation to the company, aggregating, I believe, at the peak something in excess of Nineteen Millions of Dollars; but it is at this time \$17,600,000.00.

Q. When was that loan made?

A. The loans were made at various dates and in varying amounts.

Q. It has been extended from time to time, but the total amount or the peak was reached some years ago?

A. Yes.

Q. When were the principal sums borrowed?

A. It was for various periods ranging from 1926, I believe, Mr. Fitzhugh, up all along, and of course extended all along. The Company has been able to make some payments on the principal and to pay the interest, and then would make new loans.

Q. What was the high point of that loan?

A. Something over Nineteen Millions of Dollars.

Q. In what year?

A. I could not tell you that without going to the records in the Dallas office.

Q. Isn't it a fact that the Lone Star Gas Company has gradually been reducing its debt to the Lone Star Gas Corporation?

A. Yes, it is somewhat less than the high point.

Q. And the sum of it is somewhat less than it was three [fol. 218] or four years ago?

A. Yes, I believe that is correct.

Q. You wouldn't say there was any substantial financing done in 1933, would you?

A. Yes, I would say it is substantial, on the renewing of these notes; I would say that \$17,600,000.00 is a substantial sum.

Q. Do you mean that the company has a hard time in getting the corporation to renew its own notes?

A. Well sir, it would have a hard time, if it were anybody except the corporation.

Q. Do they pay interest?

A. Yes, six per cent.

Q. And they pay a bonus also, don't they?

A. No sir, they have never paid one single thing except the six per cent interest and the management fees set out in this section of the exhibit; there has never been a bonus paid.

Q. Would say, Mr. Huley, that this management fee is justified or rather, you don't mean to say, do you, Mr. Huley, that this management fee is being paid by the Lone Star Gas Company to the Lone Star Gas Corporation in lieu of a higher rate of interest on the loan from the corporation to the company?

A. No, sir; I do not. I feel, and I say, that that management fee paid to the corporation is paid for services rendered and does not take the place of any form of bonus or any other payments for other services.

Q. So you do not claim, as justification for the manage-[fol. 219] ment fee, do you Mr. Hulcy, the fact that the corporation gives the company a low rate of interest?

A. No sir, I am not claiming it on that ground at all; however, I think it would be perfectly justified. That is, you could justify that amount in the interest rate if you so desired.

Q. Yes sir.

A. As a measure of value.

Q. Now, Mr. Hulcy, just how much time did Mr. George W. Crawford spend in 1933 in helping your company with its financial difficulties, if it had any?

A. Of the Lone Star Gas Company?

Q. Yes.

A. I am not in position to answer that, Mr. Fitzhugh. Mr. George W. Crawford's services of course have been general; there has been no particular day which he has set aside as being available for the Lone Star Gas Company, but he rather has been subject to their call for 365 days during the year 1933.

Q. Yes, but how much—

A. That has been the type of service Mr. George W. Crawford has rendered.

Q. How much of Mr. George W. Crawford's valuable time has been spent in behalf of the company, would you say, in that year?

A. I wouldn't say. I would not attempt to say.

Q. Could you say as for the time of Mr. T. B. Gregory?

A. The same statement would be true as to Mr. Gregory.

Q. Or Mr. David Mitchell?

[fol. 220] A. That is true also as to Mr. Mitchell.

Q. Do any of these gentlemen ever make trips to Texas to help your company with its financing?

A. Well, I don't know that they made trips particularly for the purpose of helping the company on the financing. Most of the assistance we have used from the company on finances would be from Pittsburgh; that is the corporation secured the money in Pittsburgh and in turn let the Lone Star Gas Company have it.

Q. Whereabouts in Pittsburgh did you obtain the money?

A. The principal place in Pittsburgh is the Union Trust Company.

Q. Is there any other place?

A. I think perhaps at some times the corporation has borrowed money in New York and perhaps some other Pittsburgh banks. I do not recall right now.

Q. Does Mr. Crawford, Mr. Gregory, or Mr. Mitchell have any connection with the Union Trust at Pittsburgh?

A. I believe Mr. George W. Crawford is a director of the Union Trust Company; he used to be, but I am not sure as to whether he is now or not.

Q. And isn't he also a director of the Mellon National Bank?

A. I am not sure about that, but I don't think so.

Q. And Mr. Mitchell is a director of the Mellon National Bank, is he not?

A. If he is I never heard about it; he may be.

Mr. Griffith: I think possibly he would like to be, Mr. Fitzhugh, but I don't think he is.

[fol. 221] Q. Well for the legal services you say were done in return for this management fee; what man or group of men are available to your company in connection with those services?

A. Mr. Mitchell principally on the part of the Lone Star Gas Corporation. You must understand that Mr. Griffith is also general counsel of the corporation as well as the Lone Star Gas Company. However, I know of my own personal knowledge that Mr. Griffith has conferred with Mr. Mitchell at several different times on legal matters affecting Lone Star Gas Company.

Q. Well, Mr. Griffith is paid a salary by your company isn't he?

A. Yes, he is.

Q. So it isn't unusual he should give his services, is it?

A. No sir; you must have misunderstood me, Mr. Fitzhugh; I didn't mean that just that way. I said I knew of my own personal knowledge several times that Mr. Griffith as general counsel for Lone Star Gas Company has conferred with Mr. David E. Mitchell of the Lone Star Gas Corporation with reference to legal matters concerning the Lone Star Gas Company, and the Lone Star Gas Company does not pay Mr. Mitchell one cent in salary, so to that extent that would be legal services rendered by the corporation to the Lone Star Gas Company.

Q. On such occasions when it is necessary for these two gentlemen to confer, does Mr. Mitchell come to Dallas or does Mr. Griffith go to Pittsburgh?

A. Well I would say generally Mr. Griffith is in Pittsburgh.

Q. And all his expenses of that trip are paid by the Lone Star Gas Company, aren't they?

A. I would say the majority of those expenses are paid [fol. 222] by the *the Lone Star Gas Corporation*.

Q. Well, do you know?

A. I don't know without looking at the individual charts.

Q. Who is the person or persons who perform these management services you speak of in helping the Lone Star Gas Company with accounting problems?

A. The Lone Star Gas Corporation, particularly in connection with the annual audits of the underlying companies, made arrangements with the firm of Haskins and Sells whereby they would make the audits for all of the companies, and then the costs of such audits would be prorated to the several affected companies; and I think it goes without saying that any firm doing an audit of that magnitude, that you would be able to secure more favorable prices than you would for any single individual company; and to that extent the Lone Star Gas Company has profited by that arrangement made by the Lone Star Gas Corporation.

Q. Well, Mr. Huley, the Lone Star Gas Company pays for every audit that Haskins and Sells ever makes of the Lone Star Gas Company, in addition to this management fee?

A. Yes, sir; they do; but that arrangement has been made by the Lone Star Gas Corporation, and on account of the other companies included in the Lone Star Gas Corporation group which are being audited, then I feel that the charge to the Lone Star Gas Company is less than it would have been if they had had an independent audit made only for their own account; so that is a benefit coming from the affiliation [fol. 223] with the Lone Star Gas Corporation.

Q. A benefit of that sort, that is not a cash benefit, is it—not one you could measure in dollars and cents?

A. I would say it would be a cash benefit.

Q. How much, in 1933, would that be worth?

A. Any figure I would give would be an approximation. I would say in the case of the Lone Star Gas Company, the difference in the audit being handled as a part of a group, rather than in a single audit, would be a difference of twenty-

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five hundred or three thousand dollars,—perhaps more. That is my idea about it.

Q. I understand it is that. How much do you pay Haskins and Sells for your audit?

A. I couldn't tell you; I would have to go to the records to find out.

Q. You pay them a substantial sum, don't you?

A. It runs into substantial figures. I couldn't tell you how much now.

Q. You pay them a sum of money commensurate with their accounting reputation?

A. I would say commensurate with the services rendered.

Q. And they are supposed to be pretty good?

A. I think Haskins and Sells stand at the top of the list.

Q. Now, who helps you with the engineering?

A. An arrangement was made by the Lone Star Gas Corporation with P. McDonald Biddison, an engineer of [fol. 224] quite an experience, I would say—that is, in natural gas management—and through that arrangement Mr. Biddison's services have been made available for all the underlying companies of the Corporation, of which the Lone Star Gas Company is one. That constitutes the engineering services made available to the underlying companies.

Q. I suppose that Mr. Biddison has worked considerably for your Company during 1933?

A. Yes, sir; Mr. Biddison has.

Q. I believe he is to appear as a witness for your Company later on?

A. I understand that he is, yes, sir.

Q. Is he paid his salary by your Company or by the Corporation?

A. His salary is paid by the Lone Star Gas Corporation.

Q. When he is loaned to your Company, who pays his salary?

A. The Lone Star Gas Company would pay its proportional part, which would be billed by the Lone Star Gas Corporation.

Q. Together with all his expenses?

A. That is quite true. However, I might add this, Mr. Fitzhugh, that if there is any time when Mr. Biddison was not aiding in actual work for any of the underlying companies, then the Lone Star Gas Corporation would stand those charges. He is paid a regular salary in the form of a retainer by the Corporation.

Q. How much is that retainer?

[fol. 225] A. Well, sir, if I remember correctly, I believe it is twelve thousand dollars a year.

Q. And what is the basis of the Lone Star Gas Company's payment for Mr. Biddison's services?

A. I couldn't tell you now, other than it is an allocation or prorata of the time on a monthly basis—on a per day basis.

Q. It is part of that twelve thousand dollars that he gets, is it not?

A. Oh, yes.

Q. Now, on pipe purchases I believe you said you have the services of Mr. Simpson at your disposal?

A. Yes, sir; we do.

Q. What are his initials?

A. J. M.

Q. Mr. Simpson, I believe you stated is a Director of the Lone Star Gas Corporation?

A. Yes, sir; he is, and a vice-president.

Q. Now, besides buying pipe for the Lone Star Gas Company and the other affiliated companies owned by the Lone Star Gas Corporation, I believe you say Mr. Simpson makes purchases for some other companies?

A. He is Chief Purchasing Officer of the Columbia Gas and Electric Corporation.

Q. Does he hold an office with that Company?

A. I am not positive just what—I am sure he does; but I [fol. 226] am not positive just what it is. I do know that his principal responsibilities are in connection with the purchases.

Q. Does he buy for anybody else besides the Columbia Gas and Electric group of companies and the Lone Star Gas Corporation?

A. Yes; I think he handles the larger purchases for the Western Public Service Corporation.

Q. How large a corporation is that?

A. I believe the capital stock account and the property account of the Western Public Service Corporation amount to some thirty million dollars. It is a company that operates in Colorado and Utah, their principal markets being Salt Lake City.

Q. So all told, Mr. Simpson buys for quite a large group of companies?

A. Well, I would say that they represent quite a number.

Q. Aggregating about how much capital, would you say?

A. I don't know; but I would say offhand that the property account of the combined properties for which he handles the purchases, in round figures would be at least \$750,000,000, I would say.

Q. How long has Mr. Simpson been handling the pipe purchases for the Lone Star Gas Company?

A. Well, sir, I don't know. I believe that Mr. Simpson was handling pipe purchases in 1920 when I came here. For several years I don't know anything about how the orders [fol. 227] were handled. That is my general impression at this time.

Q. You didn't start up this management fee to the Lone Star Gas Corporation until about 1927, did you?

A. 1929, I believe, was the first year.

Q. 1929?

A. Yes, sir.

Q. Mr. Simpson was making purchases for your company prior to that time?

A. Yes, sir; I would say he was.

Q. How was Mr. Simpson or the Lone Star Gas Corporation compensated for pipe purchases they made for the Lone Star Gas Company prior to 1929, the time when you started paying this management fee?

A. They were not compensated.

Q. You could still buy pipe then?

A. We could buy pipe?

Q. Yes.

A. Yes; all we had to do was to get the money together and we could buy it.

Q. And you still have to get money to buy your pipe?

A. Yes, sir; and it is a problem.

Q. And the payment of this management fee did not particularly simplify your problem in the matter of purchases since you were buying through some person all along?

A. Well, the actual mechanics of it were all the same.

Q. It just cost you more than it used to?

A. We paid something for that now, and prior to that we did not.

[fol. 228] Q. Have you been able to get discounts that you did not have available before payment of this management fee on pipe purchases?

A. No; I don't think so, Mr. Fitzhugh. I am sure that we got all the discounts it was possible for us to get with

Mr. Simpson handling it in 1927 or '28. I believe he made the best job it was possible for him to make. I think he put forth as much effort on that then as in 1929.

Q. What are the benefits you get from Simpson making the pipe purchases?

A. I don't think there is any question but Mr. Simpson was able to buy pipe at prices better perhaps, particularly for smaller amounts of pipe, as he was in position to shop around. The Purchasing Agent of the Lone Star Gas Company in Dallas was not in position to shop around, while Mr. Simpson was, and I think Mr. Simpson did secure very favorable prices on small lots of pipe.

Q. Did Mr. Simpson secure better prices on pipe purchases than you would have been able to get had the purchases been made through your Purchasing Department in Dallas?

A. Yes, sir; I think so. The record shows that, I think.

Q. Can you refer to some instances that show that?

A. Well, sir; I think that, particularly in the summer of 1931, Mr. Simpson did secure prices on pipe that just did not have any connection with the market or anything else. It was on small lots,—job lots—; he was familiar with the [fol. 229] conditions at that time, and he bought it at very reasonable prices.

Q. There were lots of job lots floating around at that time and available to anybody that happened to be in the market at that time?

A. I don't know whether they were or not; I am not so sure about that.

Q. Do you have a record of any pipe purchases proving the point you are trying to make?

A. I have a record of pipe purchases that were bought at less than the quoted prices.

Q. You always buy less than the quoted prices, don't you?

A. No, sir; we don't always buy less than the quoted prices.

Q. You can't say that Mr. Simpson always buys pipe at the quoted prices, and has always bought pipe at the quoted prices, and is now buying pipe at the quoted prices, with the exception of 1931?

A. No, sir; I did not say that. You made the statement to me that we always bought at less than the quoted price, and I said we do not.

Q. Occasionally you do buy at the quoted price?

A. I would say that happened very often.

Q. Are you paying the quoted price for pipe now?

A. I have not seen a pipe voucher for some time. I don't know whether we have bought any pipe the last six months or not. That would require an investigation of the records. [fol. 230] Q. You did make some purchases of pipe in 1933, did you not?

A. In 1933?

Q. Yes.

A. I am sure we did make some purchases, but I do not have a record of those purchases in 1933.

Q. Are you able to say, Mr. Hulcy, whether Mr. Simpson was able to get for your Company any better prices on pipe purchased during that year than the Company would have been able to get in the open market?

A. Well, I would imagine so, particularly for the first half of the year. Now, for the last half of the year, my impression is he would not. That is, nobody could get any preferred treatment; under the Code all buyers looked just alike; there was no preferred treatment for any purchaser regardless of how much pipe he might be in the market for.

Q. Outside of the Code—outside of the time the Code went into effect, was Mr. Simpson able to get your Company any preference at all in the matter of purchases?

A. I believe so. Of course, that is just my opinion, because I have not examined the vouchers for the first part of 1933.

Q. You don't know now the number of any voucher you could refer us to that would show a cheaper price obtained for you by Mr. Simpson than you could get in the open market?

A. For 1933?

Q. Yes.

A. No, sir; I could not.

[fol. 231] Q. How about 1932?

A. No, sir; I do not have a complete record for 1932.

Mr. Griffith: He does have a complete record for 1931, Mr. Fitzhugh?

Mr. Fitzhugh: What is that?

Mr. Griffith: He does have a complete record for 1931.

Mr. Fitzhugh: You mean he can show some purchases in 1931 where advantages were obtained. We would like to have the numbers of those vouchers, every one of them.

A. I think they were all furnished to you previously.

Q. Were they introduced at the previous hearing?

A. Yes, sir; voucher numbers were furnished, and you and Mr. Freese examined those in detail.

Q. If we have all those, don't bother then.

[fol. 232] Q. Mr. Huley, yesterday we were talking about the Federal Income Tax computations contained in your exhibits, as well as the actual payments of Federal Income Tax as made by your Company in the past. I would like to ask you, Mr. Huley, can you refer to any voucher appearing as a part of the permanent records of the Company that reflects a payment of Income Tax by the Lone Star Gas Company for the years 1931, 1932, 1933, or any part of 1934?

A. No; I don't believe that I could, Mr. Fitzhugh, for the reason that, as I stated before, the entire amount of the Income Tax which is paid for the Lone Star group is paid by the Lone Star Gas Corporation; then bills are made by the Lone Star Gas Corporation against the several un- [fol. 233] derlying companies. In most cases, I would say, that rather than a straight cash payment being made for that identical amount, the amount involved would be credited on the books of the Lone Star Gas Company as a liability due to the Lone Star Gas Corporation, and more than likely that amount would be paid along with other amounts for other services and for other charges.

Q. Then, I will ask you, Mr. Huley, if you can refer us to any voucher showing any payment of the Lone Star Gas Company for Federal Income Tax to its parent company, the Lone Star Gas Corporation?

A. No, sir; I thought I had just explained that; I tried to.

Q. If an actual cash payment were made by the Lone Star Gas Company on account of Federal Income Tax it would be evidenced by a voucher, would it not?

A. That is quite true, if it were made for that specific purpose.

Q. I believe you testified yesterday that the Lone Star Gas Company now owes a substantial amount of money to the parent company, the Lone Star Gas Corporation?

A. Yes, sir; they do.

Q. Did I understand you to say that that had been scaled

down to somewhere in the neighborhood of seventeen million?

A. \$17,600,000 is the amount presently outstanding, I think, as of December 31, 1933.

Q. How is that evidenced?

A. By notes—a series of notes.

[fol. 234] Q. Are the notes which are evidence of this indebtedness simply promissory notes unsecured by any property or collateral?

A. They are.

Q. They represent, do they not, Mr. Huley, simply a promise, unsecured in any way on the part of the Lone Star Gas Company, to pay to the Lone Star Gas Corporation the amount involved?

A. That is true. They are not secured, that is by any mortgage on any property; they are agreements to pay certain debts.

Q. Has there ever been a loan from the Lone Star Gas Corporation to the Lone Star Gas Company executed where a mortgage was executed, or deed of trust, or some other arrangement made to secure the payment of the sums involved?

A. No, sir.

Q. I believe you say your Company was organized in 1909?

A. Yes, sir; June 4th, I believe, was the organization date or date of the charter.

Q. What was the original amount of capital stock at the time your Company was organized?

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[fol. 235] A. Either two and a half or three and a half million—I forget which.

Q. Two and a half million, you say?

A. Either two and a half or three and a half million; that is my recollection at this time. I have not had occasion to go into that.

Q. You don't have any papers you can refer to to make certain of the amount?

A. No, sir; I have not. The only thing I would have would be perhaps a copy of the report made by the independent auditors for the Railroad Commission, and that is not a report of mine.

Q. At the time the Company was organized how was that capital stock paid in?

A. I believe that a portion of the capital stock was exchanged for certain assets that were turned into the Company; whether that was for the entire amount or not, I am not sure at this time.

Q. That is, certain leases and property were turned over to the Company when organized for certain amounts of stock?

A. For certain amounts of stock, yes, sir.

Q. In the original transaction wasn't the Petrolia Field—the gas reserve leases and wells in and around the Petrolia area—turned into the Company as a substantial portion of the amount which you say was actually paid in?

A. Well, some parts of the Petrolia Field—not all of it. [fol. 236] Q. Well, practically all of it?

A. No; I would not say "practically all of it." I recall very well some transactions that would run from fifty to a hundred thousand dollars for other acquisitions, and they are substantial sums.

Q. Wasn't practically all of that two and a half million that was subscribed in property situated in the Petrolia area?

A. I couldn't answer you definitely now; I would have to check into the records and get some information on that; I have not had any occasion recently to go into that.

Q. So you are unable to give us that?

A. That is correct; I am unable to give you that.

Mr. Griffith: That is from memory?

A. That is correct. I could go to the records and get any of that information you might desire.

Q. Now, then, the property that your Company claims at the present time has a greatly enhanced value over that which the Company originally started out with?

A. You mean the total amount of the property?

Q. Yes, sir.

A. The investment has increased greatly.

Q. And the capital of the Company?

A. That is correct.

Q. Now, how is—how much is the capital stock of the Company at the present time?

[fol. 237] A. The Capital Stock account of the Lone Star Gas Company at December 31, 1933 amounted to \$28,113,-

220.00—that is, the common capital stock account as of that date.

Q. That is evidenced by—that is the securities that evidence the amount of capital stock are no-par common stock, aren't they?

A. That is correct.

Q. In what amount—what number of shares?

A. 540,00 shares.

Q. Are there any bonds outstanding?

A. At the present time?

Q. Yes, sir.

A. No, sir.

Q. And there have never been, has there?

A. Yes, sir; there were original bonds outstanding of the Lone Star Gas Company.

Q. But they have been recalled in the past?

A. They matured and were paid.

Q. Are there any shares of preferred stock outstanding?

A. No, sir; there is not.

Q. The capital structure of the Company, then, Mr. Huley, appears to be a rather simple one?

A. Yes, sir; I would say it is simple.

Q. The only financing required should the Company be reorganized or be organized at the present time, would be nothing but the issuance of 540,000 shares of no-par common [fol. 238] stock and the securing of the loan which the Lone Star Gas Corporation has made your Company?

A. Yes; the \$17,600,000—that is about all that would have to be attended to, I imagine.

Q. What was the amount you gave a moment ago, Mr. Huley, as to the value—as to the amount of capital stock now—twenty-eight million and something?

A. \$28,113,220.00.

Q. To make that clear, Mr. Huley, your Company started with properties worth two and a half million in 1909?

A. I said two and a half or three million; I don't know just what the exact amount was now. That would require checking on my part to give you the exact figures on it, but that can be done, and I would be very glad to do it if you desire and give you the information at some later date.

Q. We would like very much to have that information.

A. Well, I will be glad to do that.

Q. Do you have anything to do, Mr. Huley, with making out the statements of your Company to the Secretary of State's Office?

A. No, sir; I do not.

Q. Have you ever seen the franchise tax reports made by your Company?

A. No, sir; I don't recall, Mr. Fitzhugh, that I have ever seen them.

[fol. 239] Q. Who does have charge of the making out of those reports?

A. I would say that is a duty of the Secretary's office, Mr. D. L. Cobb being the secretary.

Q. Mr. Cobb, the Secretary, is the person who knows all about that thing?

A. Either he or his assistant, Mr. Uhl, would in my judgment.

Q. What portion of the \$28,113,220 present value of the present amount of capital stock has actually been paid in, Mr. Huley?

A. I believe the records show twelve and a half or thirteen and a half million dollars that actually came in in cash into the Lone Star Gas Company. That is my recollection at this time.

Q. Where does the rest of it come from?

A. The remainder of it was the value placed on the common capital stock, I believe in 1926, giving effect to an appraisal that had been made setting forth the real worth of the Company's properties at that time; and inasmuch as the common stock was of no-par variety the worth of that common stock was stated in the capital account.

Q. Does this loan of approximately seventeen million, that you say the Lone Star Gas Corporation has given your Company, play any part in the paid-in portion of your capital stock?

A. No, sir; it does not. That entire amount is reflected in the Notes Payable of the Lone Star Gas Company.

[fol. 240] Q. Only twelve and a half million, or approximately that, has actually been paid in?

A. Actually paid into the capital stock account, and so reflected on the books as capital stock.

Q. As either money or property?

A. I would say that is correct.

Q. Mr. Hulcy, yesterday you told us you were engaged at the present time, or had your men working under you, making a segregation of Oklahoma and Texas business?

A. No, sir; I don't believe I said that, Mr. Fitzhugh.

Q. What did you say?

A. I said interstate and intra-state business.

Q. Now, just how far has that work progressed?

A. Well, sir; it has not progressed very far up to the time I left Dallas.

Q. Have you any data at all that you can give us at this time?

A. No, sir; I have not.

Q. How long will it be before you can give us some?

A. Mr. Fitzhugh, I wish I could tell you, but I don't know. It depends on the amount of time, and how soon I can get to it.

Q. Well, suppose that you could start work on that right now, how big a job is it—how long will it take?

A. Well, sir, it would be hard for me to tell you, because it happens to be one of those kinds of jobs that is hard for [fol. 241] you to tell anyone else about how to do. In fact, you don't know how to do it yourself until you get into it. My guess would be that we ought to be able to get something on it in a couple of weeks; but that is just my guess at the present time. It may be less than that, and there are several problems involved in it, that it may be more than that.

[fol. 242] Q. Well, when you do get any of that data assembled, Mr. Hulcy, will you be prepared to present that here at this time?

A. Mr. Fitzhugh, if I work any on it I will be prepared.

Q. All right.

A. I mean by that any kind of report that I work on, naturally I want it to be reasonable enough that I would be prepared to submit it and to stand examination on it.

Q. Where are the general offices of your company?

A. Dallas, Texas.

Q. Is it 1215 Wood Street, Dallas?

A. There is 1915 Wood Street, Dallas.

Q. Where are the general offices of the Community Natural Gas Company?

A. The general offices are at 1915 Wood Street.

Q. Where are the general offices of the Municipal Gas Company?

A. I believe it is 221 South Harwood, Dallas.

Q. Well, that is just around the corner?

A. It is in another building, on another street.

Q. Is it in the same building?

A. No, sir; it is in another building.

Q. The buildings are connected?

A. There is a connection between the two buildings, but they are two separate buildings.

Q. You can walk from one building into the other?

A. Yes; there is a cross-over.

Q. The only thing that keeps them from being the same building is just the wall?

[fol. 243] A. Well, that might be equally true of any two buildings you might pick down town here.

Q. They are on the same floor?

A. No, sir. The two buildings do not adjoin. It happens that one of the buildings belongs to the Dallas Gas Company and the other belongs to the Lone Star Gas Company.

Q. But they are connected, those two companies?

A. They are affiliated; that is true.

Q. Where are the general offices of the Texas City Gas Company?

A. The general offices of the Texas City Gas Company are located at 1915 Wood Street, Dallas.

Q. Where are the general offices of the Dallas Gas Company?

A. 221 South Harwood, Dallas.

Mr. Griffith: I believe that number is 301 South Harwood, isn't it?

A. That may be correct; it probably is.

Mr. Griffith: I didn't want Mr. Fitzhugh to get the wrong address.

A. No, that would be bad.

Q. Well, you might as well say 301 for all of them?

A. No, I would not say that. You couldn't get into that building from Wood Street.

Q. Where are the general offices of the County Gas Company?

A. 301 South Harwood Street—we'll correct that number.

Q. All right. Have I omitted any of the affiliated companies? If I have, they are all at the same place?

A. I would say that the affiliated companies operating in Texas and Oklahoma, the general offices are located either

[fol. 244] at 1915 Wood Street or 301 South Harwood Street.

Q. Yesterday, I believe, Mr. Huley, when we quit we were talking about page 2 of Exhibit 11—of your Exhibit 11?

A. Page 2?

Q. Yes, sir.

A. Yes, sir.

Q. We were talking about the general expense items, particularly about the management fees.

A. Yes, sir.

Q. By way of concluding examination of that item, Mr. Huley, I will ask you if there are any records of your company which would show the actual cost to the Lone Star Gas Corporation of the services which you say they perform for your company, in return for which you pay those management fees?

A. No sir; there isn't any record of the Lone Star Gas Company that would reflect the actual cost to the Lone Star Gas Corporation of rendering service.

Q. In addition to keeping your own books in Dallas, Mr. Huley, isn't it a fact that you keep a dummy set of books for the Lone Star Gas Corporation?

A. There is a memorandum set of books kept for the Lone Star Gas Corporation, a memorandum only. In fact, at the present time, I think that dummy set of books is about twelve months behind, Mr. Fitzhugh; they have not been posted up.

Q. You'll probably keep them behind until this case is over, won't you?

A. I wouldn't say that, Mr. Fitzhugh.

[fol. 245] Q. Are those books available to us for inspection?

A. No, sir; they are not.

Q. You are familiar with those books?

A. I haven't looked at them in a period of two or three years, Mr. Fitzhugh.

Q. Well, aren't you partly responsible for the way those books are kept?

A. I may have been for the way they were originally set up, but I haven't done any work on them in two and a half or three years.

Q. Does the Lone Star Gas Corporation have a permit to do business in Texas?

A. They do not.

Q. Not having a permit and not being a Texas corporation, Mr. Huley, is that the reason you say those books are not accessible to us?

A. Well, Mr. Fitzhugh, as I see it the books and accounts of the Lone Star Gas Corporation are not in issue in this case at all and have nothing to do with it.

Q. Well, that is your conclusion.

A. They are not actually books of account; they are memoranda only. If you were entitled to look at any books at all it would be the books kept in Pittsburgh and not memoranda kept in Dallas. They are not a set of books; they are a memorandum only.

Q. Well, they show all the transactions of the company?

A. Well, not in detail, not with supporting data.

Q. What would be the purpose of keeping memorandum [fol. 246] books if they didn't show transactions material to your company?

A. We carry some detail in there that the financial reports do not cover. They are not an original set of books at all.

Q. You are familiar enough with those books, aren't you, Mr. Huley, to know whether or not those books show the actual cost of service performed, if there are any performed, on the part of Lone Star Gas Corporation for the Lone Star Gas Company, in return for which the Corporation is paid this management fee?

A. No, Mr. Fitzhugh; there would not be anything reflected in the original set of books or any other set of books that would show the actual cost of service performed for any one particular company.

Q. All right, sir. Now, let's go to the next item in this general expense section.

A. Yes, sir.

Q. Administrative salaries in the amount as shown for the year ended March 31, 1934, \$120,761.00 plus.

A. Yes, sir.

Q. What does that item include?

A. That includes salaries of all executive officers—that is, officers occupying administrative positions with the Lone Star Gas Company.

Q. Does it include the salaries of the President, Vice-President and so on?

A. Yes, sir, and Chief Engineer, General Purchasing Agent, and charges of that kind and character.

Q. Do you have a schedule of those salaries?
[fol. 247] A. No, sir; I do not.

Q. Well, it is on the books, isn't it?

A. Yes, it is on the books, in the payroll account.

Q. You are not able to give a breakdown on this item?

A. No, sir; from memory I am not.

Q. Well, from anything—from the books?

A. Well, Mr. Fitzhugh, I didn't bring all the general books down here with me.

Q. Well, could you give us, if allowed some time, a breakdown on this item?

A. You mean by individuals and so forth?

Q. Yes.

A. Mr. Fitzhugh, it is possible to make an account and detailed analysis of every item appearing in any of these classified accounts; the books and records are so kept.

Q. Well, will you find out and give us a detail of the administrative salaries for the year ended March 31, 1934, as shown on your books, sheet 2 of Exhibit 11?

A. Yes, if that is desired; it can be done.

Mr. Griffith: Mr. Fitzhugh, may I ask the witness a question?

Mr. Fitzhugh: All right.

Mr. Griffith: Mr. Huley, I will ask you if within the last two or three years the Railroad Commission of Texas has almost continuously had a number of its auditors on the books, records and accounts of the Lone Star Gas Company and that every book, record and account has been thrown open to the Railroad Commission's auditors for their examination?

[fol. 248] A. That is correct.

Mr. Griffith: And they are now examining the books, records and accounts of the company?

A. They are.

Mr. Fitzhugh: We will stipulate, if you want, Mr. Griffith, that we have been examining your books for some time and are still trying to find out what they are all about.

A. I don't think anybody will have any trouble to find out what they are about.

Q. We have not been allowed to examine the books of the Lone Star Gas Corporation?

A. Well, you examined the books and accounts of the Lone Star Gas Company.

Q. Well, we wanted to examine the books of the Lone Star Gas Corporation.

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Q. You have in your general expenses, among other items listed, an allowance for regulatory commission expenses?

A. Yes, sir; that is one of the expenditures so classified in this section of the exhibit.

[fol. 249] Q. Before I go into that, Mr. Huley, I will ask you if it is not a fact that the Lone Star Gas Corporation owns approximately ninety-nine per cent of the voting common stock of the Lone Star Gas Company?

A. Yes, I would say in excess of ninety per cent.

Q. Ninety-nine per cent?

A. In excess of ninety-nine per cent.

Q. Now, then, referring to these regulatory commission expenses, it shows for the various periods an amount approximating ten thousand dollars per annum. I will ask you just what that item covers in detail.

A. You mentioned ten thousand dollars. I don't find that item in there. The smallest amount I see is seventeen thousand dollars plus.

Q. Yes.

A. With a maximum of one hundred and sixty-three thousand dollars plus.

Q. That is right. I had the wrong column. Seventeen thousand is the least, I believe, isn't it?

A. Yes, for the year 1931.

Q. And one hundred and sixty-three thousand, for the year 1932, is the most?

A. That is correct. That classification of expense or charge is the actual expense incurred and paid by the company in connection with regulatory matters—that is, making appearances before regulatory commissions and/or in courts in connection with rate matters.

Q. Did you have this type of expense occurring prior to [fol. 250] the time that this attempt on the part of the State to regulate your company started?

A. You mean the State of Texas?

Q. Yes.

A. Yes, sir; we did.

Q. Did you have it back, say, in 1925?

A. I don't recall any charges in 1925, Mr. Fitzhugh.

Q. If you had any back that far it would have been due to your case with the Fort Worth section, would it not?

A. Well, at that time it was the Fort Worth Gas Company; it was not a part of the Lone Star Gas Company.

Q. Yes, sir.

A. So, naturally, any charges incurred by what is now the Fort Worth division would not have been reflected on the books of the Lone Star Gas Company.

Q. That attempt on the part of the City of Fort Worth to regulate rates and this case are the only two attempts that have been made in this State to regulate your company?

A. Yes, of the Lone Star Gas Company in the State of Texas.

Q. Well, now, would you expect to have any expense of this sort recurring in the future, Mr. Huley, once this case is concluded?

A. Well, sir, that is hard for me to say. Those were the same questions that were asked two years ago in Oklahoma, that were asked a year ago in Fort Worth, and in fact I have heard it for the last three years. Now, it is hard for me to say whether there would be any more expense incurred on that. Personally, I think there would.

[fol. 251] Q. Well, now, you are referring to questions asked you in Oklahoma where Oklahoma was investigating your rates?

A. That is correct.

Q. There might be three cases involved, then, where your company has had rate trouble; this one, the same sort of case that your company had in Oklahoma, and the Fort Worth Gas Company case; is that right?

A. I would say in the present Lone Star system, those are the three cases.

Q. The Fort Worth case has been disposed of?

A. Yes, sir.

Q. And the Oklahoma case has been finally concluded?

A. Yes, I think so, so far as the Commission is concerned.

Q. And this is the final case in which that expense is involved?

A. I don't know that it is, Mr. Fitzhugh. I am not prepared to say just what may happen. I don't know of any-

thing to keep it from starting all over again within thirty days after it is disposed of.

Q. Well, you wouldn't say, Mr. Huley, that this item is to be expected as a recurring expense in future years?

A. Yes, I think it will; there will always be certain amounts of that work.

Q. Wait a minute. In the amounts shown in this exhibit?

A. Conditions may change again in one year or two years where expenditures would be made in substantial amounts comparable to these. Now, that is projecting into the future.

Q. Well, in all fairness, you would not be expecting to see them amount to one hundred and sixty-three thousand dollars a year?

[fol. 252] A. Well, no, I haven't set that maximum figure. That happens in only one year, and that is the amount charged for that particular accounting period.

Q. Would you even expect in the future, Mr. Huley, to see the smallest amount, which you show for 1931, actually incurred for regulatory expenses?

A. Well, it seems to me that that would certainly be a reasonable amount, an item of seventeen thousand a year.

Q. You think that would be incurred?

A. Well, I think there would be a minimum of that figure.

Q. That would be a guess?

A. Yes; I said a while ago that is projecting into the future.

Q. The last item appearing under your General Expenses is miscellaneous administration expenses. What does that include, Mr. Huley?

A. Perhaps I could answer your question best by reading from the classification of accounts the kind of charges made to that particular account. I am now reading from the uniform classification of accounts used by the Lone Star Gas Company for the distribution of charges incurred. This is Account No. 481, Miscellaneous General Expenses: "This account shall include the cost of publishing and distributing annual reports to stockholders, advertising notices of stockholders' meetings, dividend notices and other corporate and financial notices of a general character, chamber of commerce dues and donations, association dues, contributions for conventions and meetings of the industry, cost of experimental work conducted for the [fol. 253] benefit of the industry or the improvement of

service, fees of transfer agents, registrars of stock, and fiscal agents, directors' fees, costs of conducting safety campaigns, and other miscellaneous expenses connected with the general management not otherwise provided for. Also, cost of auditing the books by outside accountants." So the principal amounts included in Account No. 481, so far as the Lone Star Gas Company is concerned, are the cost of the annual audit made by the firm of Haskins & Sells; and dues to the American Gas Association and the several Chambers of Commerce in the territory served by the Lone Star Gas Company.

Q. Now, in your column for the year ended December 31, 1931, for this item, you show an amount of \$49,012.06?

A. That is correct.

Q. That is the same item mentioned about the middle of page 8 of the printed copy of the opinion of the Railroad Commission already introduced in this case and on which page are detailed a number of donations appearing as a part of this item; isn't that correct?

A. Well, if you mean, now, donations like the Dallas Community Chest and those here shown, they are not included in that item.

[fol. 254] Q. Well, these donations include money that your Company paid to the American Gas Association, the Greater Dallas Fund, Fort Worth Chamber of Commerce, Uropan Club, Mid Continent Oil and Gas Association, Texas Legislative Service, and Texas Bureau of Economic—

A. That is correct.

Q. —isn't that true?

A. Yes, sir.

Q. And those are—the donations to those organizations are the largest items which go to make up your final total as appearing on this page, isn't that true?

A. Well, I wouldn't say that they are the—that they would account for all of it. Now, the auditing cost of Haskins & Sells is a substantial sum; and I wouldn't say that they are donations, they are subscriptions, Mr. Fitzhugh.

Q. All right; but those amounts are substantially in excess of the amount you paid to Haskins & Sells; those are the largest items, are they not?

A. Well, we have here, as set out in round numbers, about ten thousand dollars, and this total charge amounts

to forty-nine thousand dollars; so there is thirty-nine thousand dollars somewhere that would have to be accounted for that is not set out on page 8 of the printed Order and Opinion of the Commission. So it would take a detailed analysis to tell what are the largest items included in there.

Q. In 1931 your subscription to the American Gas Association [fol. 255] cost your Company \$2,727.00?

A. That is correct.

Q. And your subscription to the Greater Dallas Fund was \$2,625.00—that is correct, isn't it?

A. That is correct.

Q. Your subscription to the Fort Worth Chamber of Commerce was \$1,550.00?

A. That is correct.

Q. And to the Utopian Club \$1,491.45?

A. Yes, sir.

Q. To the Mid Continent Oil and Gas Association, \$1,350.00?

A. That is correct.

Q. The Texas Legislative Service \$1,260.00?

A. That is correct.

Q. And to the Texas Bureau of Economics \$1,200.00?

A. That is correct.

Q. Exactly as it appears on page 8 of the Commission's printed Opinion?

A. That is the way it appears there.

Q. Were your subscriptions to those same organizations continued in 1932, 1933, and through 1934?

A. I am sure that they were to the American Gas Association and to the Mid Continent Oil and Gas Association and to the Chamber of Commerce. Now, I doubt very much—in fact, I am sure that you won't find anything to the Utopian Club in those periods.

Q. What is the Utopian Club?

[fol. 256] A. The Utopian Club is an employees' club, and that was a subscription made to the club for their benefit, but on account of lack of space the club was done away with, because we didn't have the space for them to have their rooms in which to meet; but it was purely an employees' club.

Q. You mean employees of the Lone Star Gas Company?

A. Yes, sir, employees of the Lone Star Gas Company.

Q. And affiliated companies?

A. Well, some employees of affiliated companies, in the

later years, particularly 1931, I imagine that is true, were included; but for several years there it was limited to Lone Star Gas Company employes.

Q. What kind of a club was this, Mr. Huley—a bridge club, or what?

A. No, sir, it was not a bridge club. They had club rooms and some recreation facilities were furnished by the Company—a radio, and perhaps a few card tables. It was more of a recreation club for them—a place for them to go. The main thought that the Company had in mind was that they would try to furnish some place of amusement for the younger employes to go at night, rather than staying on the streets. Now, that was the main thought behind it.

Q. Now, you say that has been discontinued?

A. On account of space, yes, sir.

Q. Yes, sir.

A. We didn't have the space for the rooms.

[fol. 257] Q. So that that item of expense will no longer be incurred by the Company?

A. I am sure that it will not, and was not incurred in 1932 or 1933.

Q. Well, you don't make any donations to any other society to do the same service, do you?

A. Not that I recall at this time.

Q. Do you still *continue* to the Greater Dallas Fund?

A. Well, sir, I would have to look—I would have to check the records to find out about that.

Q. You are sure, are you not, that you still contribute to the American Gas Association?

A. Yes, I am reasonably sure of that.

Q. And to the Mid Continent Oil and Gas Association.

A. Yes, sir.

Q. And to the Texas Legislative Service and the Texas Bureau of Economics?

A. I would have to check the records to tell you about that.

Q. Now, the total which you have labeled Grand Total Operating Expense, shown on the last page of Exhibit 11, in the column December 31, 1931, is carried forward by you into your Exhibit No. 5, and appears on the second printed sheet inside of the cover page, does it not?

A. No, not the grand total as shown here. Well, it is shown—that is, the grand total. However, there is the same

detail by classification of expense—that is, by Production [fol. 258] System, Gathering System, Transmission, Compressor Station, New Business, and General Expense. They appear on the second sheet of Exhibit 5; then into the total as reported on the second page of Exhibit 11.

Q. Now, to that amount you add Gas Purchased in the amount of \$1,456,830.00 plus, to get the total you show of Gas Expense?

A. That is correct.

Q. Then to that total you add Uncollectible Bills, Taxes other than Federal Income, Canceled and Surrendered Leases, to get your final total for Operating Expense?

A. That is correct.

Q. Who owed your Company these uncollectible bills?

A. Well, sir, I don't recall now just who they were, Mr. Fitzhugh. Of course, that is a matter of record—that is in the office, and we could get those out by individual customers.

Q. Well, whoever it was, it was one of your affiliated companies, wasn't it?

A. No, sir, it was not.

Q. Well, who was it?

A. It was some of the individual users along the main lines. It was not the affiliated companies.

Q. You are sure of that?

A. Well, I am almost positive of it. I can't think of any reason why we would charge off an account against an affiliated company.

[fol. 259] Q. I don't either, and that is the reason I wanted to get a breakdown on it?

A. Do you want me to get you a breakdown on who they are?

Q. I would be pleased to have it, yes. What are the taxes—

Mr. Griffith: Just a moment, until he makes a memorandum on this series of requests.

Q. What are the taxes other than Federal Income?

A. Well, they are made up principally of ad valorem taxes—that is, to the County and to the State, and to the several independent school districts and water districts, and gross receipts tax and franchise tax, and that kind and character of taxes.

Q. The largest single item which goes to make up this total are the City of Dallas city taxes, are they not?

A. No, sir; no sir; in fact, there is very little other than on the general office building that would be city taxes in Dallas—other than that and the shop, I don't think that the Lone Star Gas Company has such a great amount of taxes in the city. I wouldn't say that they are the larger amount at all.

Q. Can you give approximately the amount your Company has to pay to the City of Dallas?

A. Now, you are talking about 1931?

Q. Yes, sir, still talking about Exhibit No. 5.

[fol. 260] A. For the year 1931 the Lone Star Gas Company paid to the City of Dallas as taxes \$6,823.73.

Q. Now, is that the amount for City of Dallas Taxes that you have included in your total of \$399,000.00 as shown in this exhibit?

A. Yes, I would say that is included therein, Mr. Fitzhugh.

[fol. 261] Q. Are you willing to say, Mr. Hulcy, that \$399,008.95 that you show for taxes Other than Federal Income in your Exhibit No. 5 is the actual tax—is the actual amount of tax paid by your Company for that year for those items?

A. Well, you understand, Mr. Fitzhugh, that the non-public service properties are involved also; for instance, on automobiles; five and one-half per cent of the total of the automobile tax we have determined that that is applicable to non-public service property. So from the total taxes paid the automobiles' five and one-half per cent has been eliminated. The taxes on the gasoline plants and on the oil farms has also been eliminated, thereby leaving the sum which is applicable to public service property, and that is the amount that has been included in each of the exhibits which I have sponsored.

Q. And for both of those very reasons, Mr. Hulcy, your amount shown on this exhibit represents a computed amount, does it not?

A. No, I wouldn't say a computed amount, Mr. Fitzhugh. It is true that an allocation of taxes on automobiles has been made.

Q. All right.

A. But I wouldn't say that it is a computed amount at all, because almost all of these taxes are direct.

Q. Now, Mr. Hulcy, the last item appearing as your additions to Gas Expense is Canceled and Surrendered Leases.

A. Yes, sir, it is.

[fol. 262] Q. You show that in an amount for this year—that is, the one ended December 31, 1931, of \$239,230.96.

A. That is correct.

Q. Just what composes that item?

A. That is the value or actual cash cost to the Company of leases that have been purchased in prior periods or delayed rentals that have been paid thereon, which during this accounting period have been determined to be worthless and/or else terminating or expiring by their own terms, and have been charged off from the assets of the Company.

Q. What do you mean by "delayed rentals"?

A. The standard lease, or almost all leases that are taken are usually for a period of years—say, five years, and the lease itself expires within a period of one year unless a stipulated sum is paid at the end of the year, which automatically puts the lease forward for another year. Delayed rentals are paid on almost all leaseholds.

Q. Delayed rentals are paid, are they not, Mr. Hulcy, for the privilege of keeping in force the lease or the right covered by the contract, where no drilling has occurred?

A. That is about a correct statement, I think, Mr. Fitzhugh.

Q. So on no one of the leases covered in your item for Canceled and Surrendered Leases would there have been any—and where delayed rentals have been paid, would there have been any drilling?

A. Well, as I understand the leases now, it doesn't make any difference about the drilling; it is governed by the [fol. 263] production and not the drilling. You can drill as many wells as you want, but it is still an undeveloped leasehold until you get production in that, and that extends the lease.

Q. I see. Now, had there been any drilling on the Canceled and Surrendered Leases covered by that item as it appears in Exhibit 5?

A. Now, there might have been some drilling—that is a dry hole drilled on some of them. I am not in a position to say about that.

Q. You wouldn't be able to say Yes or No on that?

A. No, not now; naturally, I wouldn't because there are numbers and numbers of leases. I have the amount stated in the books, but not a detail by leases.

Q. I suppose the same would be true of the other exhibits too, wouldn't it?

A. I think that is correct.

Q. You wouldn't be able to say on the amount shown in the other exhibits, either?

A. No, sir, I wouldn't.

Q. Now, refer to your final page in Exhibit 5. This sheet is a typical sheet, is it not—that is, it appears in your exhibits, in the same form, from No. 5 to No. 10, I believe. Is that correct?

A. That is correct—5 to 10, inclusive.

Q. Now, in your first money column I believe you show the amounts actually shown on the books as investment in [fol. 264] the capital accounts for the items listed?

A. Yes, that is correct, with the exception of the automotive equipment and the drilling tools; and they are shown net.

Q. Yes, sir. Now, in order to get your third money column, you add to the totals as shown in your first money column the amount shown in the second column, and which, I believe you say, show the Construction Completed since the entries made in the first money column were made on the books?

[fol. 265] A. Now, that wouldn't be exactly correct. This statement is at December 31, 1931.

Q. Yes, sir.

A. The first column is taken from the permanent investment records; in the construction account there was a certain amount or in other words \$60,000 worth of construction that had already been completed and put in operation but which had not been finally checked and transferred to the permanent investment account.

Q. I see.

A. So the totals of column 1 and column 2 is carried forward into column 3.

Q. In other words, this second column just represents whatever construction had occurred since the books had been brought up to date the last time; isn't that right?

A. No—do you mean the investment books?

Q. Yes sir.

A. Of course they have been brought up to date all along but it takes some time to properly check against the engineering records and against material charged to a certain job; for instance if a job is completed in November or December, it will be 60 to 90 days before it can be classified properly—cleared from the construction account and classified into the proper investment account.

Q. Do the amounts shown in your completed construction column represent the actual sums of money paid by your [fol. 266] company for new construction; or the appraised value of such construction after the job is completed?

A. No sir, that is the actual amounts paid by the company; there is no appraisal or anything like that in connection with it at all.

Q. All right, then.

A. It is actual expenditures.

Q. Now then, by adding the first column and the second column, you obtain the totals which are shown in your third money column?

A. That is correct, yes.

Q. And I believe you stated on direct examination, Mr. Hulcy, if I correctly understood you, that the totals shown in your third money column do not represent the actual sums of cash paid out for the property as shown and as are itemized on this sheet, but rather the results of an appraisal that somebody made?

A. That is correct; that the third money column on this sheet does give effect to the appraisal which was made, setting the value and worth of the properties at that time.

Q. Now then, in the fourth column, the next column to the right, headed Revaluation, you show the totals by items, by which you marked up the value of your property on the books of the company as the result of the appraisals made?

A. Those were the amounts placed on the books in excess of the cost as shown by the books; that is correct.

[fol. 267] Q. Now two items, I believe you say, the automotive equipment and drill tools, are shown as net or depreciated items?

A. That is correct.

Q. How did you find, for the automotive equipment, the figure of \$124,838.78 shown in your revaluation column?

A. How did I find that?

Q. Yes sir.

A. That amount was set up on the books as revaluation.

Q. Well now, how was that calculated?

A. That was calculated from the appraisal that was made at the time the entries were set up.

Q. What was the date at which that calculation was made? Do you know?

A. The appraisal was made as of December 31, 1928.

Q. Now this exhibit covers or is of the date December 31, 1931?

A. That is correct.

Q. And the automotive equipment as of this date would probably be entirely different from that which existed in 1928, would it not?

A. Very likely it would; I am sure there would have been some material changes.

Q. Now, do you make any sort of provision on the books to take care of the turnover in automobiles, and show the difference in value that might be occurring as of different dates?

A. I believe in the year of 1931 or 1932 certain reserves were set up on the books of the Lone Star Gas Company to [fol. 268] apply against revaluation. Now in 1933 those reserves were written off; for instance, the appreciation on automobiles was removed entirely and limited to certain classes of property.

Q. Well now, handling the automotive equipment by a reserve set up on the books of the company, as you have just testified, would eliminate the necessity of finding as of different dates whether or not the same cars were involved, wouldn't it?

A. I don't know that I just understand you, Mr. Fitzhugh.

Q. Well, I mean if the property of the company was appraised back in 1928, when you had certain automobiles, and then you went to make this sheet, as of December 31, 1931, when you probably had other and different automobiles, that you would not really have to go out and find out whether or not there had been a turn-over in automobiles, because of the reserve you have set up on the books for the purpose of handling your accounts?

A. Well sir, we removed the entire amount; the total appreciation or revaluation shown on the books, I took it off. The only reason I start off with the investment per books is that it would tie in with the detailed schedules taken off by any independent auditors, for the Commission or anyone

else, and I arrived at a cost as reflected by the books at the end of each accounting period. I merely set this out in this detail so that anyone could follow it and tie in with the schedules they would take off.

Q. Now, this \$124,000 item appearing in your revaluation item has not been taken out on the books of the company [fol. 269] from the account showing the investment per the books, has it?

A. Do you mean up to this time, Mr. Fitzhugh?

Q. Yes.

A. Yes; if you will look at Exhibit No. 10, this same page—that is, the third page, you will find there that the entire revaluation has been removed from automobiles and written off out of the total carried on the books, and the amount shown there is net, of \$83,000 as reflected by the books, as compared with the \$212,000 as of December 31, 1931.

Q. All right; now you have not only eliminated the item for automotive equipment in your Exhibit 10 but you have also eliminated the amount for the Dallas Machine Shop?

A. Yes.

Q. Of \$43,000 plus?

A. Yes, that is correct.

Q. General office building and equipment, \$142,000 plus?

A. Yes.

Q. And \$62,000 plus for general office furniture and fixtures?

A. That is correct.

Q. And real estate, \$79,000 plus?

A. That is correct. All of those amounts have been removed from the revaluation and the total investments as stated by the books have been reduced to that extent.

Q. Why didn't you also, in your books, eliminate the \$13,800,000 plus, shown for compressor station property, due to the write-up as shown by the appraisal?

[fol. 270] A. How much was that?

Mr. Griffith: Read that question.

(Question is read.)

Q. I mean instead of compressor station property, the \$13,800,000 plus shown for gathering system and transmission system property.

A. That was a matter determined, so far as the matter of writing off of these items, by the directors of the com-

pany; I had nothing to do with it, but I am merely taking off the statement as shown by the books, as of this particular period.

Q. And your answer would be the same as to the amount shown for compressor station property?

A. In the amount of \$1,509,000 plus?

Q. Yes.

A. That is correct.

Q. And also the amount as shown for undistributed intangible properties?

A. That is correct.

Q. In the amount of Six Million Dollars, plus?

A. That is correct.

Q. So, in order to get the true figures, even as shown by your books, for the actual cash outlay of the company, you have to deduct the figures shown in your column for revaluation from the figures shown in your total investment per the books column, which is column 3, do you not?

A. That is, on this particular statement I do, Mr. Fitzhugh.

Q. Yes sir.

[fol. 271] A. However, understand that so far as the books of account are concerned, that the revaluation is set out quite clearly, and it would not be necessary for me, should I so desire, for me to ever make any reference to revaluation at all, because the records are quite clear and I could give you the actual cash cost without mentioning revaluation at all; but I did mention it, as I said while ago, for the purpose of tie-in to the total investment shown per the books.

Q. Are you able to say positively that the figure shown in the last column to the right, labeled cost at December 31, 1931, as shown in your Exhibit 5, is the actual out of pocket cost to the company for the company's properties as of that date?

A. As stated by its books, yes.

Q. Well, are you qualifying that by that final statement of yours? Does it represent the actual out of pocket, or not?

A. Well, it does not represent all of the cost of the property, Mr. Fitzhugh. Costs were incurred in connection with the drilling of wells and with the laying of well lines, that were charged off to operating expenses, and which are not included in this amount of \$47,776,749.63 at December 31,

1931, but this is the cost as reflected by the books at that date.

Q. Mr. Huley, are you trying to tell the jury that the company's books are not kept to accurately reflect the actual cost of the company's properties?

A. No sir, they do not reflect the entire actual cost of the company's properties.

[fol. 272] Q. What is the purpose of keeping books, Mr. Huley?

A. That is a matter of policy entirely, the matter of whether those certain expenses will be charged off to expense, or charged up to capital investment.

Q. What is the purpose of accounting, in your opinion?

A. To record historically the facts that have happened.

Q. And so as to give to the owners of the business, Mr. Huley, the information as of any date as to what the property of the owners is, and what the cost of operating the business is and what the profits are; isn't that true?

A. That is quite correct.

Q. I believe you said yesterday, that the general overheads up to 1927 actually incurred by the company in construction work had been charged on the books of the company in the past as operating expenses, and not as charges to capital?

A. That is correct.

Q. Now you recognize, do you not Mr. Huley, that it is not the purpose of the books, if a correct accounting method is used, to include in operating expense what really represents an addition to capital?

A. Mr. Fitzhugh, as I stated while ago, all matters of that kind is a matter of policy determined by the executive officers, and the accounting forces merely follow the policies dictated by the management.

[fol. 273] Q. I know, but just answer my question now.

A. Well, I don't know whether I can just answer that or not. I would say that the books, properly kept and in conformity with the best of accounting principles, would properly divide between operating expenses and the capital account.

Q. Yes, and where an expense is incurred to add to the property of the company, that expense should be reflected in the capital accounts, properly?

A. Yes, that is quite true, Mr. Fitzhugh. I will agree with you there.

Q. And where that is reflected instead as an operating expense, it results on the books of the company in an understatement of the capital account and an overstatement of operating expense, doesn't it?

A. That is exactly right, yes.

Q. And then to carry the reasoning a little further, where operating expenses are overstated, a financial statement taken off the books as of any particular date must inevitably show an understatement of the profits made by the company for that period; isn't that true?

A. That is correct. Any operating expenses charged as [fol. 274] such when they should have been charged to capital account does understate the net profits to that extent.

Q. So for the period prior to 1927 you will agree, will you not Mr. Hulcy, that the books of the company were kept so that as of any particular date the owners of the business, in taking a financial statement from the books, would show an understatement of the capital account, an overstatement of operating expenses, and an understatement of net profits?

A. That is correct, Mr. Fitzhugh, to the extent that any of the capital charges were included in operating expenses.

Q. Wouldn't that sort of thing result in considerable confusion to the owners of the business, Mr. Hulcy?

A. No sir, it would not. The owners of the business would be familiar with what the policies of the company were as to such matters.

Q. And you do not think they would be misinformed from the data taken from their books, on account of knowing just what was being done?

A. No sir, I do not think they would be misinformed.

Q. Of the \$47,776,749.63 total shown in your last column to the right, cost at December 31, 1931, in Exhibit 5, isn't it a fact Mr. Hulcy, that part of that amount was paid for, not in cash, but in stock?

A. Yes, there is some of the assets listed, and particularly I have reference to the Petrolia field, that is included herein, that was paid for in stock of the company.

[fol. 275] Q. Can you tell me, Mr. Hulcy, the exact amount as of this date that had actually been paid in cash?

A. No, I could not do that, Mr. Fitzhugh.

Q. Can you tell the amount that was included in that total for property located in the Petrolia field area?

A. I think there was approximately \$687,000 at December 31, 1931.

Q. Don't you show a breakdown on that in some of these exhibits here, Mr. Hulcy?

A. On the Petrolia field?

Q. Yes.

A. No sir, I do not. I think I read into the record yesterday—

Q. Yes, you are right, Mr. Hulcy; I see a detail in the record for yesterday. The amount you gave for gas rights was \$347,922.91, I believe.

A. It should be 99 cents.

Q. All right; now are you able to say, Mr. Hulcy, the exact amount paid for any particular gas right, contract or lease in the Petrolia area?

A. No, I could not say that, Mr. Fitzhugh.

Q. Well, how did you find this amount then?

A. That is the amount carried on the books.

Q. Well, is there no breakdown whatsoever on the books?

A. Yes, there is a kind of a breakdown. The Petrolia field was handled in its entirety; all of the leases were thrown together. Certain leases have been cancelled and surrendered and I don't think that I could break down by [fol. 276] individual leases and show the actual cash cost by particular leases. It was handled by the field as a whole, rather than in particular leases.

Q. Well, could you tell us this, Mr. Hulcy; how was the amount of \$347,922.99 found for purposes of setting up on the company's books; what sort of computations were gone through to get that figure?

A. Originally an account larger than that was on the books as the value of the leaseholds, but since that date certain amounts have been written off, and I believe, at one time the investment was net; I mean by that, that the reserves that had been set up for depletion was netted back against the gross investment, this amount being the net difference between the asset and the reserves set up. Do I make that clear?

Q. Yes, I think I understand. Then this figure, as given by you, for the gas rights, is a depreciated figure?

A. Yes, it was. It has the depreciation applied up to some specific date, but I do not recall the exact date now.

Q. Well, do you remember, Mr. Hulcy, the original value given to gas rights in the Petrolia district?

A. No sir, I do not.

Q. So you would be able to say or calculate from that the amount of depreciation that appears in this figure, or depletion?

A. No, I don't know what the original figure was, Mr. Fitzhugh.

Q. The amount given for gas wells as an item of the Petrolia cost is \$137,689.06?

[fol. 277] A. That is correct.

Q. How was that amount found?

A. That is the amount shown on the investment records of the company covering the materials only of the gas wells located in the Petrolia field, and does not include any development cost.

Q. Is that figure the result of an appraisal?

A. No, sir, it is not.

Q. Does it represent a depreciated value?

A. No, sir, it does not.

Q. Well now, in order to set up some amount on the books for gas wells, their value had to be found in some way, Mr. Hulcy. How was it done, if it was not done by an appraisal?

A. It was stated on the books; it was stated under a heading on the books, gas wells, investment account, and charged to that account.

Q. How was the original figure found—that is, the original entry?

A. Most all of these gas wells were drilled by the Lone Star Gas Company in the Petrolia field; they didn't take over the field in its entirety with all the wells drilled.

Q. I understand that, but does this figure represent the cost of drilling, the actual cost, or how did you get that cost?

A. Mr. Fitzhugh, the wells drilled in the Petrolia field were drilled on job order numbers; all of the charges were accumulated for the drilling of one particular wells, which included the cost of drilling, the cost of line pipe, the cost [fol. 278] of casing, the cost of the rig and everything used in connection with the drilling of that well, both labor and materials. Upon completion it was found, taking round figures for easy calculation, that the well cost a total of \$15,000.00 to drill and complete. Of that amount, \$8,000.00 represented labor, and \$7,000.00 represented materials. All right, then—the job order was checked and ready for closing and was closed. The \$8,000.00 for labor was charged to operating expenses, and the \$7,000.00 for materials was charged to investment, and by going back to the investment

records it is shown where the materials are charged in for the specific wells drilled.

Q. Then at the time these properties were originally acquired there were quite a number of wells already producing?

A. It is not my recollection that there were quite a number; there were some, I am sure.

Q. That is, there were some wells in existence at the time the properties were acquired, and some wells were drilled after the properties were acquired?

A. That's right.

Q. Could you give the number of each?

A. No, sir, I could not. That was back in 1909.

[fol. 279] Q. How in the world did you find the book cost, Mr. Hulcy, of the gas wells that were acquired as already producing wells at the time the property was originally acquired?

A. The book cost then would reflect the allocation of the charges as based on the inventories of the materials and leases.

Q. That would be somebody's estimate?

A. No, sir; the prices applied to that inventory would be set up as costs, and the remainder then charged against leaseholds.

Q. When you say you make an allocation, you mean that somebody has just made an estimate of the division?

A. I don't know—just how did I use the word allocation? It would not be a matter of estimate, the matter of inventory. The materials in wells, that would not be a matter of allocation; that would be actually based on the well logs.

Q. The pricing of the materials would be a matter of appraisal?

A. That is correct; it would be an application of prices, whether current or not, to the inventory, and arriving at a value of the materials.

Q. The Petrolia Field is quite generally known to be fairly well depleted, is it not?

A. Well, there has been a lot of gas taken out of there. It does not deliver as much gas as it used to.

Q. Would you say the field is 95 per cent depleted?

[fol. 280] A. You are talking to me about something I am not qualified to talk about.

Q. Don't you set that up on your books that way?

A. I don't recall that it is. I don't recall how it is set up.

Q. At any rate, this figure for gas rights is a depreciated figure, but the figure for gas wells is a hundred per cent figure?

A. Of the cost of materials, yes.

Q. Mr. Huley, in the total amount for the Petrolia Field you also have included Regulating and Measuring Stations, and Buildings, have you not?

A. Yes, sir.

Q. Are the totals for those items a depreciated value or a hundred per cent value?

A. They are hundred per cent values. The items are one hundred per cent values, other than the leaseholds.

Q. And the leaseholds represent, do they not, Mr. Huley, more than all the rest of the items in value?

A. Yes, sir; the leaseholds amount to \$347,000.00, and the total investment including leaseholds amounts to \$687,000.00 plus.

[fol. 281] Q. You were asked yesterday, Mr. Huley, the question: Did the Railroad Commission of Texas in its findings and conclusions eliminate from the rate base and property value of the Lone Star Gas Company, in relation to its public service property, certain gas wells of the Company, gas leaseholds and other property, in what is known as the Petrolia Field, and then you proceeded to go ahead and give the cost of the property referred to.

A. Yes, sir.

Q. In the amount of \$687,781.13?

A. That is correct.

Q. Now, you don't mean to give the idea, Mr. Huley, that that is the present value of the property covered by the Petrolia Field accounts?

A. My meaning, Mr. Fitzhugh, was—it was my understanding in going over the opinion and order, that the value of the Petrolia Field had been eliminated,—that is by the Commission—

Q. Yes, sir.

A. —and that the cost as reflected by the Company's books of that property at December 31, 1931 was \$687,000.00 plus,—

Q. Yes, sir.

A. —and I did not mean that as being—that is the worth

as being either less or more than that as of that date. I was testifying from what the books and records show.

Q. I wanted to make that clear. So you did not mean to [fol. 282] give the idea that if the Railroad Commission left out the Petrolia Field, it left out of the Company's property that should be included a six hundred thousand dollar item?

A. No, sir; I did not place any value on that at all, other than the cost as reflected by the books.

Q. You failed to mention, did you not, Mr. Hulcy, that the Railroad Commission did include in its calculations on operating expenses an allowance for gas produced and purchased in the Petrolia area?

A. Did they allow it?

Q. Well, didn't they?

A. No; I don't recall any expenses being allowed—that is, in connection with it. Certainly, Mr. Fitzhugh, I did not see where any additions were made to the operating expenses of the Company by the Commission for either of the accounting periods. If I remember correctly I tied exactly with the Commission, and I did not find anything set out as an added or additional operating expense to cover the Petrolia field.

Q. You testified yesterday, Mr. Hulcy, as if you had made a very extended study of this Railroad Commission order?

A. I believe I have.

Q. You do know as a fact that no deductions were made from Operating Expenses of the Company as actually incurred during those periods on account of Petrolia operations?

[fol. 283] A. No, sir; there were no deductions.

Q. So they fully cover everything—

A. In the way of operations, yes, that is quite true.

Q. I was under the impression that something over and above what was stated on the books had been allowed. Now, the Commission order on page 27—have you that convenient?

A. All right, sir.

Q. This shows that in addition to the Operating Expenses allowed—this is about the ninth or tenth line from the bottom, I believe, on page 27—that the Railroad Commission allowed for the full amount of gas produced from the Petrolia Field in 1931 at the rate of 4.26 cents per thousand cubic feet?

A. Allowed in the Operating Expenses?

Q. As an addition to the Operating Expenses.

A. No; I did not find that, Mr. Fitzhugh. I didn't so analyze the opinion; but it is my understanding that the Commission did allow the total Operating Expenses incurred by the Company in the Petrolia Field for the year 1931.

Q. And they considered, did they not, as shown on this page, that the 379,984 M. cubic feet produced in the Petrolia Field in 1931 would be paid for at the rate of 4.26 cents to the Company?

A. That is not my interpretation, as I read this Section, and I will state that I have read under "Petrolia Field" no [fol. 284] less than half a dozen times, and my understanding of this section of the opinion, Mr. Fitzhugh—

The Court: What page is that?

A. Page 27. —is where the Commission points out that at the field price of six cents per thousand cubic feet, which has been determined by them, less a compression cost of 1.74 cents per 1000 cubic feet, would leave a net market value of 4.26 cents per 1000 cubic feet, and that the value of that gas would amount to \$16,187.32, that being based on the total delivery of 379,984,000 cubic feet at the above quoted price of 4.26 cents per 1000 cubic feet; and that inasmuch as the Commission had allowed Operating Expenses amounting to \$30,100 for the Petrolia District, that they were being liberal in connection with it. Now, that is my interpretation of it; perhaps, I am wrong.

Q. How much gas did the Petrolia Field produce in 1932?

A. Mr. Fitzhugh, I don't know just how much.

Q. You don't have a record of that with you?

[fol. 285] A. No, sir; not with me.

Q. It was in an amount less than that produced in 1931, wasn't it?

A. I don't know whether it was or not; I would have to verify that.

Q. It is generally known that that field is gradually playing out?

A. Yes; But I did see figures the other day on 1933, and if I remember correctly the production of the Petrolia Field was about 400,000,000 cubic feet of gas—that is the figure that sticks in my mind,—for 1933.

Q. Now, yesterday, Mr. Fitzhugh, you testified that your Company uses a uniform classification of accounts as ap-

proved, I believe you said, by the American Gas Association?

A. Yes, sir; that is true.

Q. What is the American Gas Association?

A. The American Gas Association is an association composed—that is, its membership being composed of, I will say, practically all of the operating gas companies in the United States.

Q. It is just an organization of gas companies?

A. Yes, sir; it is.

Q. And these gas companies, if I understand you, all got together and got them an accounting manual made up, and that represents a uniform system which you speak of, and [fol. 286] which your Company uses?

A. That is the composite judgment, I would say, as to accounting classifications, of all the operating gas utilities companies in the United States.

Q. Yes, sir. Now, then, the fact that you use a uniform system of accounts does not mean, does it, Mr. Huley, that you have adopted any new theory from what you formerly had in the matter of accounting before the adoption of your uniform system?

A. No, Mr. Fitzhugh; this present classification of accounts is more elaborate than the old classification used.

Q. To make myself clear, Mr. Huley, what I am trying to get at is this—the classification has nothing to do with accounting theory at all, does it?

A. No, sir.

Q. It is simply a manual for accountants?

A. That is correct.

Q. To guide them?

A. Yes, sir; and in order that there will be a uniformity of charges as between all companies.

Q. And the fact that your Company uses the uniform system does not mean that your accountants cannot make the same amount of human error as before?

A. Yes, sir; that is absolutely true; as long as the human element enters into it, there will be some errors.

Q. And it does not mean that your operating officials are not still given the same latitude in adopting what [fol. 287] method of handling the accounting problems of the Company that they had theretofore?

A. They still have the same right with reference to matters of policy, that they always used; that is quite true.

Q. Yes, sir. There is nothing particularly significant, is there, about the fact that your Company uses a uniform system, except probably to show you are trying to keep the books as best you can?

A. I think that is a very reasonable statement of it, Mr. Fitzhugh.

Q. And I believe you said——

A. We are trying to keep up with the latest practices used by almost all the gas companies.

Q. And I believe you say there are no regulations in Texas upon your Company as to how you shall keep your books?

A. That is correct.

Q. I believe you said yesterday, Mr. Hulcy, that you not only worked for the Lone Star Gas Company, but for a number of other companies?

A. Yes, sir; I do.

Q. Would you mind stating all the positions you hold in the companies with which you work?

A. I am Assistant to the President of the Lone Star Gas Corporation, and also Assistant to the President of the Lone Star Gas Company; I am Assistant to the President of the Lone Star Gasoline Company, and of the Galveston [fol. 288] Shares, Incorporated; also of the Galveston Gas Service Company. It happens I am also a Director in each of those two companies. I am a Director and Assistant to the President of Texas Cities Gas Company; I am a Director and Assistant to the President of the Council Bluffs Gas Company, operating in Council Bluffs, Iowa; I am a Director and Assistant to the President of the Northwest Cities Gas Company——

Mr. Griffith: Operating where?

A. Operating in Washington, Oregon, and Idaho. I am also a Director and Assistant to the President of Coos Bay Gas Company, operating at Marshfield, Oregon. I am also Assistant to the President of the Guthrie Gas Service Company, operating in Guthrie, Oklahoma. I am Secretary and Comptroller of the Northern Natural Gas Company, with headquarters in Omaha, Nebraska. I am also Secretary and Comptroller of the Northern Gas Pipe Line Company, operating a natural gas pipe line, 24-inches in size, from the Panhandle District in Texas on through into South Dakota and Minnesota. I am also Secretary and Comp-

troller of the Minnesota Northern Natural Gas Company; and of the Missouri Valley Pipe Line Company of Nebraska; also the Interstate Production Company; of the Northern Fuel and Supply Company. I am a Director and Secretary and Comptroller of the Argus Pipe Line Company. I am secretary and comptroller of the Garden City [fol. 289] Gas Company and also of the Peoples' Natural Gas Company. Now, I believe that is all the positions I hold.

Q. Your duties toward these various companies include the supervision of the accounting systems of quite a number of them, do they not?

A. I have general supervision of all accounting for the affiliated group of the Lone Star Gas Corporation, and also of the Northern group, that is, holding the office of Secretary and Comptroller of that group of companies.

Q. How do you divide your time—about what proportion of your time do you give to the Lone Star Gas Company?

A. I would say, generally speaking, Mr. Fitzhugh, about fifty per cent of my time is devoted to the Lone Star Gas Company; the remainder of the time being split between the other companies.

Q. Which of these companies pay you a salary?

A. Well, sir; I receive salary from three companies—the Lone Star Gas Company, the Lone Star Gas Corporation, and the Northern Natural Gas Company.

Q. What are the total salaries paid you by each?

A. I will have to make my calculations before I can tell you. The Lone Star Gas Company pays me \$5,460 a year; the Northern Natural Gas Company pays me \$3,000 a year; the Lone Star Gas Corporation pays me \$1,600 a year; making a total of \$10,060 a year.

Q. What is it, Mr. Huley, that you have been figuring out there?

[fol. 290] A. What you wanted was my salary by companies, didn't you?

Q. Yes, sir.

A. Well, I was trying to give it to you that way.

Q. Well, what is it you had to figure out—some allocation?

A. No, sir; but I wanted to give you the right figures on a per annum basis, Mr. Fitzhugh.

Q. Are you compensated in any way besides the payment of salary?

A. No, sir; I am not.

Q. You don't get a bonus, or stock, or any other remuneration?

A. No, sir; this is the total amount of remuneration I receive from any of the companies I am connected with.

Q. Are you paid extra for special work?

A. No, sir; I am not; this includes everything.

Q. You are a stockholder in all these organizations, are you not?

A. In all these?

Q. Yes.

A. No, sir; I am not.

Q. In a good many of them, you are?

A. No, sir; I am not.

Q. You are in some of them, aren't you?

A. I may have a few shares of Lone Star Gas Corporation; but there is not any of the stock of the Northern Natural group that is held by other than three companies that own the entire issue of common capital stock—I mean [fol. 291] other than the qualifying shares held by directors.

Q. Mr. Fitzhugh, Line "H", Line second-"H", and Line "G", I believe, are three of the lines referred to yesterday which run through the states of Oklahoma and Texas; am I correct?

A. That was Lines "G", "H", and second-"H"?

Q. Yes.

A. Yes; those lines are located both in Oklahoma and Texas.

Q. Now, about how many towns are served by your company in Oklahoma?

A. I believe about twenty-six or twenty-seven, something like that.

Q. The accounting records of the Company show exactly the amounts of gas sold by days to each of the towns in Oklahoma; isn't that correct?

A. Perhaps it could be calculated by days. So far as the accounting records, it has the totals here by months, Mr. Fitzhugh.

Q. Yes, sir; and the amounts for months will be accurately reflected by the books of the Company?

A. That is correct.

Q. And that is true of every town to which your Company delivers gas in the State of Oklahoma?

A. Yes, sir; and that also applies to the State of Texas, too.

[fol. 292] Q. Approximately how many gas fields do you have in the State of Oklahoma?

A. Well, of the major fields—that is, the areas which perhaps might include two or three fields as they are known,—that is, to the operating departments of the Company—but there is the Chickasha District, the Duncan District, the Fox District, and the Loco District. Those are the general fields that I think of right now; there may be other fields.

Q. Now, the books and records of the Company are kept, are they not, Mr. Huley, to accurately show all the gas produced in each field?

A. Yes, sir; that can be determined.

Q. And to show the production expenses and the cost of producing such gas?

A. That is true.

Q. The books also show, do they not, Mr. Huley, the exact amounts of gas purchased under the amounts paid for all gas purchased?

A. That is correct. That can be determined by individual wells. You understand when I say it can be determined that it would take calculations to determine that; it is not kept in that manner, but the deliveries could be accumulated for individual wells and the field price applied to that particular delivery.

[fol. 293] Q. I believe you say, Mr. Huley, that it would take you about two weeks to make the separation?

A. That was my guess, Mr. Fitzhugh.

Q. Could we have some sort of an understanding with you that we would be furnished with the results of that investigation of yours as soon as completed?

Mr. Griffith: This is a trial of a law suit, if Your Honor please.

The Court: I think the witness stated that he would be glad to give it to him.

Mr. Griffith: When and if made.

Q. Well, it is going to be finished, isn't it?

A. Well, sir, I hope to finish it. I have already had some work done on it, Mr. Fitzhugh, and expect to get through just as soon as I can. Now, personally, there may be some problems that I have not thought about at this time that

may slow it up a good deal. I don't know just what can be done upon it.

Q. Mr. Huley, did the Lone Star Gas Company make a report to the Congressional Committee to make an investigation of public utilities?

A. Now, was that what was known as the Rayburn Committee?

Q. Yes.

A. Yes, I think they did.

Q. Is a copy of the report made by your company to that committee a part of the records of the company?

A. Well, now, I am not in a position to say, Mr. Fitzhugh, [fol. 294] I have not ever seen the report. I understood it was made, and a report was made by the Rayburn Committee, of which the company had a copy, but I have not ever seen it.

Q. You have seen the report, have you?

A. No, sir; I have not seen it. I have just heard about the report by word of mouth.

Q. So you don't know its contents?

A. No, sir; I don't.

Mr. Griffith: If you would like to have a copy I will be glad to furnish it, Mr. Fitzhugh.

Mr. Fitzhugh: All right. I will ask you, does the report have any statement in there about the split of Texas and Oklahoma gas?

The Court: Are you asking the witness or the lawyer?

Mr. Fitzhugh: I was asking Mr. Griffith, because he is the only one that knows.

The Witness: Well, I didn't know about it.

Q. You are familiar with the fact that the reports submitted for the basis of the computation of gross receipts taxes—State taxes collected by the State of Texas, show a split as between the Texas Business and the Oklahoma business of about 95 per cent for Texas and five per cent for Oklahoma; isn't that true?

A. I don't know just what those proportions are. I don't know just what those proportions are. As I understand it, the gross receipts taxes are based upon the gross receipts received in Texas. Now, those reports are handled altogether by the Secretary's office; they don't come through [fol. 295] my office, and I have not had any occasion to look at it.

Q. Now, as a matter of fact from your own knowledge, Mr. Hulcy, about ninety-five per cent of the business of the company is Texas business?

A. You mean markets—gas sales?

Q. Yes, sir, markets, as to the total volumes of gas delivered, or receipts, either.

A. Well, I would say that somewhere between—maybe ninety to ninety-five per cent of the sales made by the company are in the State of Texas. All of the large markets are in Texas; there is no question about that.

Q. Yes, sir. And of the approximately four thousand miles of pipe line, about fifteen per cent would be the correct mileage to be found in Oklahoma; isn't that correct?

A. At December 31, 1933, the Lone Star Gas Company owned and operated 3,823.97 miles of pipe line in both States, Texas and Oklahoma. Of that amount, 527.16 miles were located in Oklahoma. The remainder, or 3,305.81 miles, were located in Texas.

Q. That, stated in percentage, would be about fifteen per cent?

A. Well, sir, it is 13.8 per cent.

Q. What is the value, as shown on the books, of their gas reserve located in Oklahoma?

A. I could not tell you, Mr. Fitzhugh. I don't have that information with me.

Q. Do you have the information for Texas?

A. No, sir; I don't.

Q. You do know as a matter of fact, Mr. Hulcy, that the [fol. 296] value of gas reserves in Oklahoma, those I am talking about owned by the company, as compared with those owned by the company in Texas, is very insignificant—less than one per cent?

A. You mean the cost as reflected by the books of gas reserves?

Q. Yes.

A. I don't know that it would be less than one per cent. The company does own quite a bit of gas reserves, particularly in the Chickasha field of Oklahoma and some in the Loco field. I don't know that they are less than one per cent—it would take an examination of the records to tell you.

Q. Well, you know that that figure would be true as to the appraised value at the present time?

A. Well, I don't know whether that would be one per cent or not. I know that they are small when compared with the Texas reserves.

Q. When was the Meridian Gas Company purchased by the Lone Star Gas Company?

A. January first, 1932.

Q. At what cost?

A. I have forgotten just what the actual cost was.

Q. Well, it was something over a million dollars, wasn't it?

A. Yes, sir. The actual cost of the property taken over by the Lone Star Gas Company was \$1,338,406.21.

Q. Now, the Meridian Gas Company was owned by the Lone Star Gas Corporation, wasn't it, before it was acquired by Lone Star Gas Company?

[fol. 297] A. The Lone Star Gas Corporation owned substantially all of the common capital stock.

Q. So it and the Lone Star Gas Company were affiliated companies before it was acquired?

A. That is true; yes, sir.

Q. The transaction represents, then, simply a book transaction, does it not?

A. No.

Q. So far as the Lone Star Gas Corporation is concerned?

A. You mean so far as the entire group is concerned?

Q. Yes.

A. From a consolidated standpoint, yes; it was a receipt by one company and a disbursement by the other.

Q. Now, then, the figure you gave, I believe you said, represented book cost?

A. That represented actual cash cost to the Meridian Gas Company, the cost to them paid to outsiders.

Q. The cost appearing on the books of the Meridian Gas Company?

A. Yes, sir, their cost.

Q. It was not a depreciated value, then?

A. No, sir; it was not.

Q. What did the Lone Star Gas Company pay for that property?

A. I have forgotten now, Mr. Fitzhugh, but it was in excess of a million three hundred thousand dollars.

Q. They paid, then, the full amount of the book cost undepreciated?

A. Yes, but in excess of that, I would say. I have forgot-

ten just what the amount was, but the figure that I have [fol. 298] quoted was actual cash cost to the Meridian Gas Company of those properties.

Q. What were the considerations that prompted Lone Star Gas Company to acquire the Meridian, or why was this transfer made?

A. Well, I think they felt that it could be operated as a single unit as well as two units, and the fact that it was a pipe line system beginning in the Chickasha field and coming on south and tying in with the Lone Star property, and I think it was a logical transfer and consolidation of property.

Mr. Fitzhugh: I believe that is all.

Redirect examination.

Questions by Mr. Griffith:

Q. Mr. Huley, you testified on your Direct Examination and also on Cross Examination that your Exhibits 5 to 10, inclusive, wherein you state the cost to the Lone Star Gas Company of its public service property was an understatement rather than an overstatement of the cost?

A. Yes, sir; I did.

Q. And, summarizing your testimony, do you make that statement by reason of the reasons heretofore assigned?

A. Yes, sir; I do.

Q. That is, that the company failed to capitalize in the earlier years the general and undistributed costs, costs of drilling wells, and the cost of construction of field lines?

A. That is correct.

Q. Now, Lone Star Gas Company started in business in 1909, and, with one exception, I believe you testified, the [fol. 299] costs were not capitalized until 1927 or 1928?

A. 1927, with the exception of 1920.

Q. What was the general practice of other oil and gas companies relative to the capitalization of these charges during the period from 1909 to 1927?

A. Most of the gas companies operating during that period were headed by an executive personnel which had formerly been connected with oil companies, and it was generally the practice of the oil companies, particularly with reference to oil wells, not only to charge off development cost, but I know in some particular cases where the entire

cost of the wells was charged off, including equipment also, and it was the general practice, I would say, with the natural gas companies to charge development expenses to operations. It was looked upon as a hazardous business, and if they capitalized these charges and wells were dry in a year or two years they would be left with a big property account that had no value, and it was a common practice in the industry to charge development cost to operating expenses rather than to capitalize them. It was looked upon as a conservative measure.

Q. Was it also the practice to fail to capitalize undistributed costs from 1909 to 1927?

A. Yes, sir; it was.

Q. And for all those reasons you state that the cost of the Lone Star Gas Company's public service property which is reflected by the books is an understatement rather than an overstatement of the historical cost?

[fol. 300] A. Yes, sir. The figures we used do not include the actual cost incurred for those properties during the earlier years.

Q. Now, Mr. Huley, with reference to the amount of taxes other than Federal income taxes which have been put in evidence in Exhibits 4 to 14, inclusive, where you show taxes other than Federal income taxes as paid by the company, is the amount of the tax set forth in each of those respective exhibits all of the taxes paid by Lone Star Gas Company?

A. No, sir; that is not all of the taxes paid by Lone Star Gas Company. Additional amounts were paid—that is, covering non-public service property, oil farms and gasoline plants; they are not included in this statement.

Q. In other words, the amounts included in your statement—that is, in the statements set forth in Exhibits 4 to 14, inclusive—were not only paid in relation to the public service property, but the company had considerable additional taxes covering non-public service property?

A. Yes, sir, and they were paid.

Q. The taxes other than Federal income taxes paid, set forth in your Exhibits 4 to 14, were less than the total of the taxes paid by the company?

A. That is correct.

Q. You have set forth only the tax which is applicable to the public service property?

A. That is correct.

Q. And in your calculations of Federal income tax you have applied only the Federal income tax calculation which is applicable to the gas business of the company?

[fol. 301] A. That is correct, based on the amount available from public service operations.

Q. Now, Mr. Hulcy, on yesterday there were introduced in evidence here contracts between the Lone Star Gas Company and the Dallas Gas Company and contracts between County Gas Company and Lone Star Gas Company governing the sale by Lone Star Gas Company to the County Gas Company and Dallas Gas Company of domestic gas at the city gate?

A. That is correct.

Q. The original contract was executed in 1925?

A. That is correct.

Q. And subsequently extended and amended?

A. That is correct.

Q. The contracts of 1925 provided for the payment of forty cents at the city gate?

A. That is correct.

Q. In the year 1925 was there any affiliation between Lone Star Gas Company and the Dallas Gas Company or the County Gas Company?

A. There was not.

Q. In other words, were those contracts made at arms' length?

A. They certainly were.

Q. There was no intercorporate relationship or joint security ownership as between the Lone Star Gas Company on the one hand and the County Gas Company and the Dallas Gas Company on the other hand?

A. There was not.

Q. Prior to the time that Texas Cities Gas Company became an affiliated company of the Lone Star Gas Company [fol. 302] was the Lone Star Gas Company engaged in the supplying of gas to that company for retail distribution in the cities of Waco and Paris, Texas?

A. They were.

Q. And what price was being paid by the Texas Cities Gas Company to the Lone Star Gas Company for domestic gas at the city gate?

A. Forty cents per thousand cubic feet.

Q. In other words, this price of forty cents per thousand

cubic feet was established long prior to the time of the affiliation?

A. That is correct.

Q. Mr. Huley, refer, please, to your Exhibit 13. Where in that exhibit do you find your calculation with respect to Federal income taxes?

A. The calculation for Federal income taxes appears in each section of the report. For section No. 1, found on page 16; for section No. 2, found on page 29; for section 3, found on page 39, and for section No. 4, on page 49.

Q. Now, Mr. Huley, in all of your Federal income tax applications and calculations as set forth in Exhibit 13 did you give effect to the interest deduction—that is, did you deduct from the net revenue of the company before applying the Federal income tax rate the amount of interest paid by Lone Star Gas Company?

A. Yes, sir; I did.

Q. Why did you do that, Mr. Huley?

A. The reason I did that in this exhibit is that all of the [fol. 303] calculations included in Exhibit 13 are based on findings by the Railroad Commission and as set out in their opinion and order, and it was set out in their opinion and order that the interest charges should be deducted before making calculations for Federal income taxes, and for that reason the interest has been deducted all the way through this schedule or this exhibit.

Q. In other words, Exhibit 13 is a correct application of the actual experience of the company and the findings of the Commission?

A. That is correct. The title cover of Exhibit 13 shows as follows: "Accounting Schedules Based on Findings by Railroad Commission of Texas and set out in their Opinion and Order dated September 13, 1933."

Q. Now, Mr. Huley, when you came to prepare your Exhibits 4 to 10, inclusive, you did not give effect to the deduction of interest in your calculation of income taxes?

A. No, sir; I did not.

Q. Why did you not do so?

A. I feel, Mr. Griffith, that any profits as found by a regulatory body or as available for return are subject to Federal income taxes at the current rate and that it makes no particular difference how that net profit is used, whether it is used in paying interest or other charges, and further, the different bases of calculation of Federal in-

come taxes will cause you to arrive at different answers for like properties and like businesses.

[fol. 304] Q. Can you give an example of that, Mr. Hulcy?

A. Yes, I can. I have worked out a simple illustration that I thought perhaps would set that out and show what I had particular reference to. I have assumed that there were two companies—we will call them Company A and Company B—that were exactly the same, their properties cost them the same—twenty million dollars in each case, they enjoyed the same revenues, they had the same operating expenses; everything being the same, with this exception, that the capital structure of Company B was made up entirely of common capital stock, and of Company A the twenty million dollars was furnished by fifteen million dollars of bonds and the remainder in capital stock. Now, with those assumptions, Company A sold five billion cubic feet of domestic gas at a price of 40 cents, or for two million dollars; Company B sold the same amount of domestic gas, and five billion feet of industrial gas at an average price of twenty cents, or gross revenues of one million dollars; the total sales for each of the companies being ten billion feet of gas for gross revenues of three million dollars. The gas purchased, operating expenses, and taxes, in both cases, were \$1,400,000.00, which would leave each of the companies \$1,600,000.00 for depreciation, Federal taxes, and return. The depreciation and depletion was calculated—that is at a rate of 2.09 per cent of the rate base; or, in other words, \$418,000.00. Each of the [fol. 305] companies then had \$1,182,000.00 that was available for Federal income tax and return. In the calculation of the Federal income tax as actually paid, Company A computed interest charges at six per cent on the \$15,000,000.00, or \$900,000.00. In calculating their profit for income tax purposes they had \$282,000.00 subject to taxes. The current rate was $13\frac{3}{4}$ per cent. Their Federal income taxes would amount to \$38,775.00, which would leave them available for Return \$1,143,000.00. On Company B, of which the entire capital structure was capital stock, there was no interest deduction; so they had no interest to deduct for tax purposes. They had \$1,182,000.00 subject to Federal income tax, and that, calculated at the prevailing rate or at the same rate for Company A, their income tax was \$162,525.00, which left them as available for Return \$1,019,475.00. Now, the amount appears as the percentage

of the rate base in each case, of Company A 5.73 per cent; Company B, where their capital structure was all capital stock, only earned 5.10 per cent. In fixing a rate or a calculation of a necessary domestic gate rate in each of the two cases—that is, with property, expenses and sales being exactly the same; it would be necessary for Company A to earn all of their operating expenses and gas purchased, which was \$1,400,000.00, and depreciation and depletion in the amount of \$418,000.00, and for Federal income tax the amount calculated, \$38,774.00, and the six per cent return [fol. 306] on the rate base of \$20,000,000.00, which would be \$1,200,000.00, or their total earning requirements would be \$3,056,775.00. The industrial revenues contribute \$1,000,000.00 of those earnings, which would leave \$2,056,775.00 that would have to come from the domestic gas sales. The domestic gas sales amount to five billion cubic feet. This volume of gas divided into the amount necessary to be furnished by the domestic gas consumers would leave or would show that it would be necessary for this Company to have a rate of 41.1 cents per thousand cubic feet for their domestic gas. By the same calculations, Company B, that had to pay more income tax, it would be necessary for them to have a 43.6 cent domestic gate rate, or the calculation of the Federal income tax alone would make it necessary for the Company which had all capital stock, to have a domestic gate rate of $2\frac{1}{2}$ cents per thousand cubic feet higher than the other company. On the application of a yardstick of that kind, you would get different results, where the properties are the same, and it just seems to me on the face of that, it is wrong to make calculations other than the way I have done.

Q. Mr. Huley, the credit for interest paid by Lone Star Gas Company on actual payments of income tax would amount to about \$1,100,000.00, as reflected by your Exhibit 13?

A. That is correct—about \$1,017,000.00, I believe, in the [fol. 307] year 1931.

Q. Lone Star Gas Corporation has owing to it from Lone Star Gas Company \$17,600,000.00?

A. That is correct.

Q. Suppose to-morrow that that \$17,600,000.00 indebtedness were converted into stock of Lone Star Gas Company, what would be the effect upon the Federal income tax situation of the Company?

A. Well, there wouldn't be any interest deductions to deduct before calculating income tax; that would automatically add to the amount paid by the Company of a minimum of \$135,000.00 to \$140,000.00.

Q. Merely by that change of capital structure?

A. That is right; and would be purely within the control of the company to do it; and that is one other reason that I don't think that calculations should be based on anything that would be subject to control by an operating company to that extent.

Q. Mr. Hulcy, Mr. Fitzhugh has examined you in connection with the fees paid by the Lone Star Gas Company to the Lone Star Gas Corporation.

A. Yes, sir.

Q. You have stated that the Lone Star Gas Corporation has continued to furnish money to the Lone Star Gas Company at an interest rate of six per cent per annum.

A. Yes, sir, they have.

[fol. 308] Q. Have they done that over the last several years?

A. Yes, sir, they have.

Q. And has the Lone Star Gas Corporation at all times been able to procure money for the purpose of furnishing money to the Lone Star Gas Company at an interest rate as low as six per cent?

A. No, sir, they have not.

Q. Will you please tell the jury how much at various times the Lone Star Gas Corporation has been compelled to pay for money while at the same time lending money to the Lone Star Gas Company at a six per cent interest rate?

A. Well, at all times when the Lone Star Gas Corporation borrows money, even at a six per cent rate, it is necessary for them to pay interest in advance. The Lone Star Gas Company does not pay interest to the Corporation in advance. So even though the rates were exactly the same, there would be an excess cost to the Corporation over and above what they received from the Lone Star Gas Company; but I have in mind at this particular time one instance with which I am entirely familiar; I sat through the transactions [fol. 309] in Pittsburgh, both in the bankers' offices and in the corporations' offices, and participated in the discussions. It was in November of 1931. It was necessary for the Lone Star Gas Corporation to borrow three millions of dollars. They had bond and interest requirements, and other things,

coming due as of November 1st, amounting to, in round figures, a million dollars. They had other obligations that were coming due between that period and January 1st. So the officers—that is the President and one of the Lone Star Gas Corporation called on the President of the Union Trust Company with reference to securing this loan. Our balances, or rather the Corporation's balances were rather low at that time. Well, they started off perhaps by giving us a lecture that the balances should be built up and should be maintained. The result was that it was necessary for the Lone Star Gas Corporation, even though they didn't need part of that money until sixty days later, to borrow the entire three millions of dollars at that time, discounting the total amount for a period of eight months; the notes were made as of November 1st, and they matured on July 1st of the following year, and they were discounted at a six per cent rate. We obligated ourselves as to how that money would be drawn. It was approximately a million dollars that was to be withdrawn at December 1st, and one million, two hundred thousand dollars at January 1st. And in addition [fol. 310] to that the Corporation agreed that they would begin building up balances, whereby certain funds would be on hand to meet this note at maturity. But forgetting that, of any interest rate and these balances to be built up, there was a minimum of eight or eight and one-half per cent interest rate paid on this money that was actually borrowed. Forgetting about paying any interest in advance, because this money was left there and was not subject to check until the specific dates when we had agreed that we would withdraw it. So money has cost the Lone Star Gas Corporation in excess of the amount they have received from Lone Star Gas Company at different times.

Q. And what was the giving effect to the credit balance that had to be maintained in connection with that loan from the Union Trust Company—did the Lone Star Gas Corporation have to pay substantially in excess of eight per cent for that money?

A. Oh, yes; yes; giving effect to the credit balance, it would have been substantially in excess of eight per cent.

Q. Mr. Huley, one more question about this income tax matter before I forget it. On yesterday you testified that the actual income tax payments of the Company for the year 1932 was \$234,000.00 plus.

A. Yes, sir, \$234,000.00 plus.

Q. Now, if you will refer to your Exhibit 6. You show a [fol. 311] Federal income tax calculation of \$343,000.00 plus.

A. Yes, sir, I do.

Q. Now, Mr. Hulcy, will you please explain to the Jury the difference between the actual taxes paid by the Company for the calendar year 1932 covering Federal income tax, and your income tax calculation as reflected in Exhibit 6?

A. The actual income tax paid, of course, covers the operations of the Company, the non-public service property as well as the public service property, and includes losses from the operations of some of those properties, particularly the oil wells and oil farms; it does include as a deduction the actual amount of interest paid. The Federal income tax as used and set out in Exhibit No. 6 is a calculation based upon the amount of net revenues from public service operations only, and does not give any effect to either interest or any losses that may have been sustained on the non-public service property operations.

Q. And would it have been proper for you to have included in your Exhibit 6 in your calculation of Federal income tax anything which had to do with the oil or gasoline business of the Company?

A. No, sir, it would not. That is not an issue in this case, as I understand it.

Q. Mr. Hulcy, Mr. Fitzhugh asked you some questions about the New Business expense of the Company?

A. Yes, sir.

[fol. 312] Q. He seemed to be surprised that the Company advertised in newspapers. Why does the Lone Star Gas Company do newspaper advertising?

A. To build up business, to increase their gas sales, and to acquaint the customers using Lone Star Gas Company gas with the advantages of gas as a fuel, and with the problems that have to be met by the Lone Star Gas Company.

[fol. 313] Q. Now Mr. Fitzhugh asked you if the Lone Star Gas Company sold any gas direct to customers and your answer was that it was a wholesale gas company?

A. That is correct.

Q. Did you ever hear of the Ford Motor Car Company?

A. Yes, I have.

Q. That is a rather large company?

A. Yes, I say that it is.

Q. Did you ever hear of the General Motors Corporation?

A. Yes.

Q. Do you understand that either one of those companies is engaged in the retail sale of automobiles to the public?

A. No sir, it is not; it is my understanding that they are wholesale only.

Q. At the same time do you understand that they conduct intensive advertising campaigns for the purpose of selling their cars?

A. Yes, national advertising.

Q. And is that true of the products of all national manufacturers?

A. Yes.

Q. Or all manufacturers operating on a larger scale?

A. Yes, that is quite true. I think of one product in particular, and that is Old Dutch Cleanser, which is manufactured by the Cudahay Manufacturing Company, and I don't suppose they sell a package of it at retail, but they do conduct an intensive advertising campaign in national advertising.

Q. That is all.

[fol. 314] Recross-examination.

Questions by Mr. Fitzhugh:

Q. In the case of the Ford Motor Company, Mr. Huley, Mr. Ford doesn't own all his dealers either, does he?

A. No sir, and neither does the Lone Star Gas Company; they do not own any of the dealers.

Q. They are all one pack, aren't they—the pipe line company and the distributing companies that distribute to the customers?

A. They are affiliated companies, but the Lone Star Gas Company does not own any of the common stock of a single one of the distribution companies.

Q. And likewise the business of a gas company is a monopoly in its very inherent nature, is it not?

A. Well, I wouldn't say it is a monopoly, and it is not in Dallas and at several other points on the system that I could point out.

Q. Who sells to any distributing companies in the territory served by the Lone Star Gas Company, except the Lone Star Gas Company?

A. Do you mean to the distributing companies served by the Lone Star Gas Company?

Q. Yes.

A. Well, I don't know right now of any other sales that are made to the distributing companies served by the Lone Star Gas Company. However, in certain places there are more than one distributing company operating.

Q. But that is very much the exception, rather than the rule, is it not?

[fol. 315] A. Well, I would say it is not the rule, for which we are very thankful; of course.

Q. You are not trying to say, are you Mr. Hulcy, that the advertising problems of a gas company are in any wise related or comparable to the advertising problems of the motor car manufacturers?

A. I would say they are just as important, Mr. Fitzhugh, just as important. There are wholesalers in each case, and retailers in each case.

Q. Well, who could sell gas in towns where you serve without competition, except yourself?

A. Well, under the present set up in a large number of these towns, unless some additional pipe lines were built in, the Lone Star Gas Company is the only one which could sell gas in those particular places—

Q. Yes sir.

A. But there are also a lot of people that sell oil and a lot of people that sell coal.

Q. Well, what of it?

A. Well I would say that that would be comparable in a competitive way to another make or automobile or anything else; it is competition. I would say it is comparable.

Q. Do you mean to give the impression, Mr. Hulcy, that you actively compete with coal as a fuel in Texas towns?

A. Yes, I do. We compete with wood and we compete with oil.

Mr. Griffith: And shavings and sawdust in some places?

[fol. 316] A. We have been competing with everything, and for the past two or three years, particularly.

Q. In spite of the fact that Texas has no extensive coal fields and it is a long haul to get coal, you maintain you are competing with coal as a fuel?

A. Yes, we are.

Q. Mr. Hulcy, where you have in your exhibits costs as shown by the books, and particularly in the extreme right hand column of the final sheet in Exhibits 5 to 10, inclusive—

A. Yes sir.

Q. To make clear how the items going into those totals are carried—if, for instance, you built a house or bought a house in the year 1909, when the company first started out in business—

A. Yes sir.

Q. And that was at a cost of \$10,000, and if the house were in being at the present time, the cost of that house, regardless of its present condition, would appear at the full figure of \$10,000 in your final column, wouldn't it?

A. That is correct, yes. That is correct, if it were still in service at the date of the exhibit.

Q. Now, Mr. Hulcy, what is the piece of financing you referred to — while ago, in talking about the negotiations of the Lone Star Gas Corporation with the Union Trust Company at Pittsburgh?

A. Well, I don't know that I understand.

Q. Was that the money obtained for the Lone Star Gas [fol. 317] Company, or was that some other money?

A. Well, I don't know it was particularly for the Lone Star Gas Company. It was for use by the Corporation for furnishing money to certain of the underlying companies, but I could not tell you right now, Mr. Fitzhugh, whether part of that was furnished to the Lone Star Gas Company or not.

Q. Well, wasn't that particular money obtained for the purpose of financing the Northern Natural Gas Company?

A. No sir; a good part of it was used to pay bond interest maturing on November 1, 1931.

Q. The Union Trust Company of Pittsburgh is affiliated with the Lone Star Gas Company—

A. No sir.

Q. —in its banking activities, in about the same way that it is affiliated with these companies operating in Texas which are connected with the company, isn't it?

A. No sir, I would certainly say that there was no affiliation whatever between the Lone Star Gas Corporation and the Union Trust Company.

Q. Nevertheless, the Union Trust Company and the Lone Star Gas Corporation do have some directors in common?

A. Well, I think perhaps Mr. George W. Crawford might have been a director of the Union Trust Company, and he is also a director of the Lone Star Gas Corporation.

Q. He is chairman of the board, isn't he?

A. Yes, he is chairman of the board.

[fol. 318] Q. And there are some other directors in common between the two companies, aren't there?

A. Well, if there is I do not recall them; that is the only one I know anything about.

Q. There are some directors in common between the Lone Star Gas Corporation and the Mellon National Bank of Pittsburgh, are there not?

The Court: Mr. Fitzhugh, didn't you ask every one of these questions yesterday?

Mr. Fitzhugh: No sir.

The Court: I am quite sure you did, and that he answered them just as he is answering them now.

Mr. Fitzhugh: I asked as to persons in particular on yesterday, and now as to the directors as a whole.

The Court: I think you are asking the same questions now but if you want to ask them over and over again, go ahead.

Q. All right, Mr. Huley.

A. The only one I know about, Mr. Fitzhugh, is Mr. George W. Crawford, and I am not positive that he is not a director of the Mellon National Bank. He may be, but it is my understanding that he is a director of the Union Trust Company, and I do know that he is a director of the Lone Star Gas Corporation also, and the chairman of the board of directors.

Q. Suppose, Mr. Huley, that the Lone Star Gas Company were to pay off the full amount of its indebtedness to the Lone Star Gas Corporation. The effect of that transaction, [fol. 319] so far as the Corporation is concerned, would simply be taking money out of one pocket and putting it into the other?

A. It would be transferring money from the Lone Star Gas Company to the Lone Star Gas Corporation.

Q. Interest on the loan being deductible from the income for the purposes of computing the federal income tax, makes the tax payable by the company, if it should be paid separately, less. Isn't that true?

A. Mr. Fitzhugh, I don't understand the question; I don't know just what you have reference to.

Q. Well, I will ask it over. You have in your exhibits figured that the Lone Star Gas Company pays its federal income tax separately from the other companies?

A. I have calculated it on that basis, Mr. Fitzhugh, yes.

Q. All right now, if the company were actually to make its income tax payments separately, instead of a consolidated proposition.

A. And they will, in 1934.

Q. Yes, I understand—but when it does make a separate report and payment, this interest will be deductible?

A. If they pay interest, yes.

Q. From its taxable income?

A. That's right.

Q. And for that reason, the Federal income tax which the [fol. 320] company would have to pay will be less than it otherwise would, if this loan were not in existence?

A. That is true.

Q. And along that same line, Mr. Huley, the real purpose of your company charging the general overheads, and the other few items that you mentioned to operating expenses instead of capital accounts in the years prior to 1927 was for the real purpose of cutting down the amount of profits shown by the company and of reducing the federal income tax; isn't that true?

A. No sir, the same policy was in effect for the years of 1910, 1911 and 1912, along in there, prior to the income tax, Mr. Fitzhugh.

Q. Well, there is no doubt but what such a policy did and would reduce the amount of taxable income which the company would have to declare on in making its federal income tax return as a separate company?

A. There is no question about it, that if some of the items charged to operating expense had been charged to property rather than operating expenses, the profits would have been higher and the income tax would have been greater. There is no question about that.

Q. One other question that I forgot to ask you on cross examination, Mr. Huley: Prior to the year 1929, or about that date, wasn't it the policy of your company to charge as operating expenses all of the costs of attaching new business, obtaining new customers, training personnel, obtaining [fol. 321] the records of the company and in general all of the costs considered as in part making up going value? They

were charged as operating expenses and not capitalized on the books of the company?

A. Yes, I would say that is generally true in so far as the costs of records and the costs of securing new business; they were charged as operating expense.

Q. And they are at the present time being charged to operating expense, aren't they?

A. I would say generally that is correct.

Q. And none of those expenses are being capitalized at this time?

A. Some of the engineering costs are capitalized on each particular job as it is completed now. But of course, there has not been much construction in the past two or three years, since that policy has been put into effect; but there is a certain percentage included in all construction costs to include administrative and legal expense, and purchasing and engineering and so on.

Q. I am simply talking about the items that go in ordinarily to make up going value.

A. I understood you to say records, Mr. Fitzhugh, and that does mean records right there, some parts of it.

Q. That is all.

Mr. Griffith: That is all, Mr. Hulcy.

[fol. 322] E. A. STEINBERGER, a witness for defendant, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Griffith:

Q. State your name, please.

A. E. A. Steinberger.

Q. Where do you live?

A. Dallas, Texas.

Q. What is your business?

A. Valuation engineering in connection with the natural gas industry.

Q. Do you have any connection with the Lone Star Gas Company, the defendant in this case?

A. I do. I am the Chief Valuation Engineer of the Lone Star Gas Company.

Q. Where were you born, Mr. Steinberger?

A. I was born in Bavaria, Germany.

Q. At what age did you come to the United States?

A. I came to the United States at the age of sixteen.

Q. Did you enter school upon coming to the United States?

A. Well, about a year after I came to the United States [fol. 323] I went to Subiaco College, in Arkansas—

The Court: Where is that?

A. About fifty miles east of Fort Smith—between Fort Smith and Little Rock, where I learned the English language, and took an academic course, and in return for my tuition I washed dishes and worked in the kitchen. After I left that school I worked at manual labor in the peach orchards of Arkansas and the wheat-fields of Kansas, and as a laborer in Western Oklahoma, and spent some time as a station helper and night telegraph operator. I then secured a position in the Accounting Department of the Gulf, Colorado & Santa Fe Railroad, at Galveston, Texas. I was promoted from one desk to another until I was made head of the R. E. Department—or Road and Equipment Section; and in 1919 the United States Railroad Administration borrowed me from the Santa Fe, and moved me to Dallas, Texas, where I was made Chief Statistician of the Southwestern Regional District. While in that position I supervised a department of approximately one hundred and twenty-five employees, accountants, and clerks. I was in direct charge of the final checking of all operating, maintenance and financial reports that were prepared by the various railroads of the so-called Southwestern group. After I got through checking those reports they were forwarded to Washington for final summary of all operating [fol. 324] statistics of the United States Railroad Administration. At the termination of the Federal Control of the Railroads, I secured a position with Hammon and Kell, at Ranger, Texas. These gentlemen were at that time engaged in the construction of what is now known as the Wichita Falls, Ranger & Fort Worth Railroad. After being employed by these people as Clerk for a few months I was appointed Auditor for that railroad, and it was my duty to install the accounting records for that railroad, as well as to supervise the accounting of all expenditures during construction of that railroad. All of the records installed by me had to be in conformity with the requirements of the Interstate Commerce Commission's classification of ac-

count. In 1921, at the death of Mr. Hammon, I left the Wichita Falls, Ranger & Fort Worth Railroad and secured a position with the Union Terminal Company, at Dallas. My principal work was to assist engineers in a computation of what was called Deferred Maintenance or Proportionate Depreciation. After that work was completed I was made Assistant Auditor of the Union Terminal Company.

In 1926 I entered the employ of the Lone Star Gas Company,—on June 15, 1926. I was also an employee of the Community Natural Gas Company, in what was known as the Plant and Equipment Section, at that time. Three months after I entered the employ of the Lone Star Gas [fol. 325] Company I was made Chief Clerk of the Plant and Equipment Section.

Q. What did your duties consist of while you were in charge of the Plant and Equipment Section?

A. While I was in charge of the Plant and Equipment Section it was my duty to supervise the accounting of all investment—account of all money expended for new pipe line construction, as well as construction of new natural gas distribution plants. During the period that I was Chief Clerk of the Plant and Equipment Section, the Lone Star Gas Company expended approximately thirty million dollars on new natural gas construction work; and the Community Natural Gas Company expended approximately ten million dollars on similar work. I was responsible for the accounting, segregation, and classification of these expenditures. In addition thereto it was my duty and I did make studies to be used by the Construction Department in making estimates for new work. Since 1928 I have been engaged exclusively in valuation work for natural gas properties. The major portion of the year 1928 I assisted Mr. Ed O. Connor, and Mr. P. McDonald Biddison, both consulting engineers, in the compilation and preparation of the reproduction cost new appraisal of the then Fort Worth Gas Company, which is now known as the Lone Star Gas [fol. 326] Company, Fort Worth Division. I also assisted the engineering staff of Sanderson and Porter, which engineering firm was retained by the Fort Worth Gas Company, in also preparing a reproduction cost new appraisal, which was in connection with litigation at that time pending in the United States District Court for the Northern District of Texas. While engaged in this work I made extensive studies, both with respect to labor performances, and

the ultimate cost involved in the construction of various units of natural gas properties. For the major portion of the year 1929 I was engaged as the Company's representative in assisting Sanderson and Porter, Engineers, in all matters relative to an inventory and appraisal of the public service property and plant, as well as the non-public service properties of the Lone Star Gas Company, and the Meridian Gas Company. Upon completion of this inventory and appraisal, which was the latter part of 1929, I was appointed Chief Valuation Engineer of the Lone Star Gas Company, and it became my duty to organize the Valuation Department, install the various necessary valuation records and make analyses and studies of construction costs of the various classifications of properties of the natural gas industry. These analyses and studies include construction costs of gas properties of both the Lone Star Gas Company and the Community Natural Gas Company, and having a value of more than forty million dollars. For the purpose [fol. 327] of making these analyses both comprehensive and intelligent I spent approximately an entire year in actual construction work, to familiarize myself with all of the phases and all of the component units of the natural gas industry, beginning with the drilling of the gas well, through the gathering, transmitting, and final distribution of the natural gas to the consumer. While engaged in this field of study I personally prepared and installed daily progress reports of construction. These progress reports had to be prepared each day by the construction crew, namely, by the timekeeper, who was responsible for the time of each man engaged in a specific class of work; by the engineer, who was responsible for the daily performances, and stated the number of cubic yards of excavation, or number of welds made per day, or the number of lineal feet of pipe laid per day; by the construction foreman, who was responsible for the correctness of the reports. These construction reports form the basis of my studies of men-hour performance and unit costs of doing work. In order to familiarize myself with the conditions under which this construction work was carried on, I made it a practice to spend a substantial part of my time on the ground where construction work was in progress. In the organization of the Valuation Department I was fortunate in securing men who had [fol. 328] several years of actual construction experience, being graduate engineers of accredited schools of learning

and had a thorough knowledge of the various phases and ramifications of the natural gas industry. In my studies and analyses of unit costs of construction I used both the information secured through the daily progress reports, as well as the daily progress reports beginning with the first part of the year 1930, and work done prior to that time or prior to the installation of the daily progress reports. I also availed myself of various data accumulated by the Company in making the studies of the work done prior to the installation of the daily progress reports. The purpose was to get as complete and as much data as it was possible to secure.

Since January 1, 1930 I have also been appointed and have acted as Chief Valuation Engineer of the Community Natural Gas Company, the Texas Cities Gas Company, the Stamford and Western Gas Company, the Dallas Gas Company, and the County Gas Company, all of which companies are operating companies owning a substantial amount of property and doing a substantial amount of business in the State of Texas. During the years of 1929 and 1930 I assisted Mr. Ed C. Connor, consulting engineering of the Lone Star Gas Company, in the preparation of an inventory and appraisal of the Galveston and Waco distribution systems [fol. 329] of the Texas Cities Gas Company; as well as the Coleman Gas and Oil Company, of Coleman County, Texas. I also assisted Mr. P. McDonald Biddison, consulting engineer, in the preparation of an inventory and appraisal of the Dallas and County Gas Companies, Dallas, Texas. In addition to assisting Messrs. Connor and Biddison in valuation work of natural gas properties, I have personally made complete inventories and reproduction cost new appraisals of the Galveston, El Paso, Waco, and Brenham distribution systems of the Texas Cities Gas Company; the Wichita Falls, Sherman, Denton, Ennis, Corsicana, and Hillsboro distribution systems of the Municipal Gas Company; the Abilene, Cisco, Greenville, Eastland, Pilot Point, and Henrietta, and eighty-nine small distribution plants in the State of Texas, and all of the distribution plants, twenty-six of them, of the Community Natural Gas Company of Oklahoma. I have also made an inventory and appraisal of the entire property, both transmission and distribution systems, of the Stamford and Western Gas Company. Appraisals made either personally or jointly with Messrs. Connor and Biddison have an aggregate value of \$169,000,000.00.

[fol. 330] Q. Based upon the studies which you have made, Mr. Steinberger, have you been able to develop the unit cost of construction covering the several classifications of natural gas properties?

A. I have. As I testified before, data and progress reports were made, and they furnished me the most detailed and complete information that it is possible to get to arrive at what is called unit cost of construction or unit cost of doing the work.

Q. As the result of your experience, would you say that you are familiar with all phases of natural gas plant construction work and with the present costs and methods of construction?

A. I am thoroughly familiar.

Q. Mr. Steinberger, in connection with the presentation of the company's case in this law suit, have you had occasion to prepare an inventory of the public service property of the company, exclusive of the Fort Worth division?

A. I have prepared an inventory of all physical properties of the public service plant properties of the Lone Star Gas Company.

Q. Was that inventory made and determined by a personal check and count of the several units of property in all the property classifications?

A. It was. It was determined—that is, all visible items of material were determined by an actual count on the ground; by that I mean by checking every item, every component unit of material over four thousand miles of pipe line.

[fols. 331-333] Q. Mr. Steinberger, of course it has been impossible for you personally to do all of this work?

A. That is correct.

Q. Did you have the assistance of a large corps of men and the various field superintendents of the company?

A. In the preparation of the so-called field inventory I had approximately forty-seven engineers, as well as the entire personnel of the Engineering Department, and in connection with the inventory of compressor stations I had available to me the Assistant Superintendent of Compressors, as well as the Chief Engineers and their assistants in each of the twenty-six respective compressor stations of the system.

Q. How many complete investigations have you made of the properties of the Lone Star Gas Company?

A. To date I have made four complete investigations of the properties.

Q. Over a period of how many years?

A. Over a period of five years.

[fol. 334] Q. Mr. Steinberger, when the inventory of January 1, 1933, was prepared, did you, acting together with Mr. P. McDonald Biddison and Mr. Ed. C. Connor, make an appraisal on the basis of reproduction new cost as of January 1, 1933?

A. We did.

Q. And the inventory of which you speak is embraced in that appraisal?

A. That is correct.

Q. You have copies of that inventory set forth in the appraisal for presentation in evidence here?

A. I have.

Q. Will you produce them, please?

(Thereupon the witness produced the instruments referred to.)

Q. Mr. Steinberger, was this inventory and appraisal as of January 1, 1933, prepared, in so far as the inventory is concerned, by yourself, and the appraisal being prepared [fol. 335] in co-operation with P. McDonald Biddison and Ed C. Connor?

A. It is.

Q. It is styled on the title page "Lone Star Gas Company—Appraisal—Cost Reproduction New, January 1, 1933", consisting of Volumes 1 to 6, inclusive?

A. Yes, sir.

Mr. Griffith: We offer in evidence the exhibit so identified by the witness.

Mr. Stout: Your Honor, may I ask the witness a few questions.

The Court: Yes, sir.

Mr. Stout: As a basis for an objection.

The Court: Yes, sir.

Questions by Mr. Stout:

Q. Does the exhibit, Mr. Steinberger, that you have before you have any separation or segregation as to property located in Texas and property located in Oklahoma?

A. It does not.

Q. Does it have any separation, division or segregation as to property that might be used in intrastate commerce within the State of Texas and property that might be used in Oklahoma or in interstate commerce, if there be any?

A. It does not.

[fol. 336] Q. And it would be a simple and easy calculation and matter for you, with your great and detailed knowledge and your study, to separate the Texas property from the Oklahoma property, would it not?

A. It would probably be an easy matter, but it would be some job.

Q. Well, I mean you have all the data with which you could do it?

A. Yes; the data is here.

Q. Well, do you have that separation made?

A. No, sir.

Q. Have you done any work on it?

A. No, sir.

Q. But as you have it there it is all together?

A. Yes, sir.

Mr. Stout: Now, if Your Honor please, we make this objection: Our theory and our position is that they are attacking the order of the Commission. The burden of proof is, of course, upon them to do that; that to get at it, fairly and properly do it they have got to segregate the property; that they can not take property in Oklahoma, where it may cost more to operate it—that they can not take property in Oklahoma, where conditions are different and where Texas has no control over it, and put it in the whole thing and make Texas taxpayers liable for it. Our objection specifically is that it is not segregated, and they have found their defense [fols. 337-348] upon the doctrine that it is all mixed up between the two States, and it is our contention that they should separate it, and we object to the introduction of this for those reasons.

[fol. 349] (Thereupon the appraisal above referred to, comprising six volumes, was marked as Defendant's Exhibit No. 28.)

By Mr. Griffith:

Q. Now, Mr. Steinberger, as I understand it, you are standing primarily responsible for the correctness of the inventory of property units as set out in Volumes I to VI of Exhibit 28?

A. That is correct, Mr. Griffith. I am responsible for the inventory, the application of material prices to the respective units after they were furnished me by the pricing department of the Lone Star Gas Company, and in general am responsible for this report—that is, as to the set up and the manner in which it is compiled.

Q. Mr. Steinberger, referring to the first classification of [fol. 350] property appearing in connection with your inventory of the physical property, what do we find that first class of property to be?

A. The first class of property would be in the Production System property.

Q. And the Production System consists of what, Mr. Steinberger?

A. The Production System Property consists of Leaseholds Developed and Leaseholds Undeveloped, Gas Wells, Other Production System Structures, Other Production System Equipment.

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Q. Now, Mr. Steinberger, in connection with the developed leaseholds, how was the determination of the developed leaseholds and their value made?

A. In connection with this appraisal, the developed leaseholds covers the estimates calculated reserves or the volume of gas under tested and proved acreage or parcels thereof, as of the date of this appraisal, namely, January 1st, 1933. Now, this reserve volume of gas was determined by Mr. Frank E. Kendrick, Chief Geologist for the Lone Star Gas Company, and Mr. J. H. Dunn, Chief Production Engineer of the Lone Star Gas Company. As to the value of this reserve volume of gas, it was determined by Mr. D. A. Huley. All of those three gentlemen will testify in [fol. 351] respect to their findings.

Q. In connection with the next item, of leaseholds undeveloped, included in the physical properties, how was that inventory determined?

A. Leaseholds undeveloped represents the cost of all leaseholds acquired for the purpose of ultimately developing the same into proven natural gas acreages, and in connection with this appraisal it covers the original cost of the lease, plus all rentals paid to date—that is, the date of this appraisal, namely, January 1st, 1933; plus all incidental expenses incurred in the acquisition of this lease, as well as all minor expenses. It covers the lease and leases for which no reserve has been calculated; it covers the leases or parcels of such leases for which no reserve has been calculated. Now, the value applied to such leases—

Q. That is, the undeveloped leases?

A. On the undeveloped leases, was taken from the records of the Company, and represents the out-of-pocket expense to the Company for such leases.

Q. Now, in cases where undeveloped leases adjoined developed leases, what was done to distinguish as between the two?

A. In cases where undeveloped lease was included in a developed lease, only the proportionate part of the undeveloped lease cost was included in the account or classification styled Leaseholds Undeveloped; in other words, if an undeveloped lease adjoined a developed lease, and [fol. 352] Messrs. Kendrick and Dunn found that—or calculated fifty per cent of the undeveloped lease in—as a gas reserve; in that case I only took the remaining fifty per cent, or, say, a lease was worth a thousand dollars, I merely took \$500.00 and included that under Undeveloped Leaseholds; the remainder of the fifty per cent was computed under acquired gas reserves or developed leaseholds.

Q. You will later testify relative to the cost of undeveloped leaseholds, and present an exhibit in that connection?

A. Yes, sir; I have prepared an exhibit on that.

Q. And that exhibit is based upon the actual cash cost of the leaseholds to the defendant company?

A. Yes, it represents out-of-pocket expense only.

Q. Mr. Steinberger, the next item of physical property under Production System Property appears to be Gas Wells. How is that account divided?

A. That account is usually divided between gas well equipment and gas well construction. Gas well equipment covers all casings, liners, tubing and fittings neces-

sary for the proper operation of a well in the production of natural gas. Now, in connection with this appraisal the footage of casing and tubing in all wells was taken from the Company's records, or what is styled the well log, which record shows the actual footage, as well as kind and size of casing installed on original construction or drilling of the well. The information thus secured from the log was [fol. 353] checked against the Company's investment record, to note and correct all change that may have been made between the date of the original drilling of the well and the installation of that casing and the date of this appraisal, namely, January 1st, 1933. Now, all miscellaneous fillings, such as gate valves, L's and T's fittings, what is called on the Christmas tree, as well as all quantities of lumber on the platforms, as well as well cellar, dimensions and yards of excavation for salt water pits, as well as all quantities of material in the cattle-guards and in the fences, the number of fence posts, and the lineal feet of wire for fences enclosing were secured on the ground by an actual inventory and check of every foot of lumber in the cattle-guards or every fence post or other item, with a full description of the fittings, size, kind, and make of fittings, as gate valves, and so forth. All of the information, of course, was secured from a so-called field inventory.

[fol. 354] Q. Now, did you make a field inventory of gas well construction?

A. No; gas well construction, representing the cost of drilling the hole, naturally that information was secured again from the company's record, namely the well log, which record as I previously explained, is a record that is kept at the time the well is drilled to show the kind of soil encountered at every change of the soil, at the exact footage, and that record shows the total depth of the well on the original construction.

Q. Now, is the phrase "gas well construction" taken to mean the actual labor cost in connection with the drilling of the well?

A. That is correct; it covers all expenses in connection with the drilling of the well.

Q. How many gas wells does the company own which are included in the inventory and appraisal introduced in evidence here as Defendant's Exhibit 28?

A. There are a total of 388 gas wells included in this appraisal which is styled Exhibit 28.

Q. Mr. Steinberger, the next item of physical property listed under the general classification of Production System Property appears to be other production system structures; what do those structures consist of?

A. Those structures merely consist of cottages and cabins for well attendants and pressure men, as well as structures housing pumping equipment and syphoning equipment and other equipment necessary for the operation of the gas well. [fol. 355] Q. How did you secure your inventory of other production system structures?

A. The inventory of all other production system structures was secured on the ground by an actual inventory; that is, by securing the actual measurements of the size of the structures and a complete inventory of all the lumber going to make up such a structure. For instance, we made a complete count of the quantity of lumber, that was the number of feet of two by fours for rafters and six by sixes for sills, the square feet of corrugated iron and square feet of roof to determine the amount of shingles necessary, and counted all the hasps and hinges in the doors and so forth, and there was a complete count of every single unit or component part of a structure to determine the unit cost of a structure and thereby determine the cost of the structure as a whole.

Q. How many units were there in other production system structures?

A. There is a total of ten miscellaneous structures under this classification.

Q. Under the heading of other production system equipment appearing under production system property, how was the inventory made?

A. Other production system equipment, including and covering all miscellaneous equipment necessary for the operation of gas wells, such as drill repair and clean-out tools and all minor tools necessary for the production of natural gas and the operation of the well, an inventory was made on the ground of every item of such equipment, from such small items as pliers on up to a derrick or whatever [fol. 356] was necessary for the drilling of a gas well; not only the original drilling of the gas well, but the cleaning out of the gas wells and the lowering of gas wells, if the gas should give out at a depth theretofore produced from, and it was necessary to drill to a deeper formation.

Q. Under the heading of gathering system property, the

first general classification of property appears to be rights of way. Now, what do you mean, intend and understand by the term, "rights of way"?

A. By the term rights of way, I mean all interest in land owned by the company, which does not terminate until more than one year after the effective date of acquisition, and which is acquired by the company to locate all its so-called well lines or lines in the so-called gathering system.

Q. How did you secure the quantities of the rights of way which were inventoried in your Exhibit 28?

A. The quantities were secured from the records of the company and covered only rights of way of which there was an actual purchase made by the company. It does not cover rights of way for all well lines listed under the account field line equipment, which is the third classification of accounts; and in other words, if there is a well line located on a company-owned lease, it will not be necessary for the company to pay for any right of way or any rights to locate its pipe line, as the lease is owned by the company, and it covers only rights of way for pipe lines which cross [fol. 357] leases or fields on which the company has no lease or does not own the lease or has no right in the land. There are only 72 such rights of way included in this appraisal.

Q. What was the source of your determination of the inventory covering field measuring station structures; and what are field measuring station structures?

A. Field measuring station structures are structures owned by the company to house meters and all appurtenant equipment, such as the meter piping, meter stand and all such other equipment, in other words, as may be necessary to measure natural gas as it is delivered from the well and before it is delivered into the transmission system. Now, the number of structures were again determined by an actual field inventory made by my engineers, and in order to determine the cost of each structure, it was again necessary to make a complete count of the lineal feet of the two by four lumber, as well as the squares of corrugated iron, and those buildings more or less all have a two by four wood frame with corrugated iron sidings and roof. It was also necessary to determine the amount of excavation for the pit, and whether it was covered with one or two coats of paint. Now in some of the fields, and particularly in the latter developed fields, such as the Panhandle field

located in Wheeler County, Texas, most of the structures are of uniform size. In that case we only took a certain number, generally ten or fifteen per cent of the total structures, and broke them down as to units and quantities of [fol. 358] material, and the cost arrived at, or rather the quantities arrived at in that manner was applied to the remainder of the buildings, as long as they were of the same size and kind of construction.

Q. How many measuring station structures are there, inventoried and set forth in your Exhibit 28?

A. There are a total of 603 measuring station structures inventoried in Exhibit 28.

Q. What is the classification of property known as field measuring station equipment; and how was your inventory of that classification of property determined?

A. Field measuring station equipment covers such items as meters, meter stands, meter piping and all appurtenant fittings owned by the company and used by it to measure gas as it is delivered from the well and before it is transmitted into its main lines. In other words, it measures all gas that is purchased by the company, as well as produced by the company from its own wells. The inventory of course was secured in the field, and by that I mean a trip was made to every one of those stations and a full description was made of the orifice meter, giving the exact description of the meter as to the type, the range, differential, kind of clock, chart numeral and so on, as well as the kind of meter piping, the size of meter stand and the size and kind of orifice flange; and there was a complete inventory of every unit and item entering into this classification of accounts.

[fol. 359] Q. How many units are there in the field measuring station equipment which is set forth in your inventory?

A. There is a total of 613 measuring stations included in this Exhibit 28.

Q. Now, the next classification of property appears to be field line equipment. What is field line equipment, Mr. Steinberger?

A. Field line equipment represents the cost of pipe and equipment owned by the company and used by it to transport gas from the mouth of the well or rather from the outlet side of the so-called Christmas tree, to the point where it is delivered into the gathering or transmission system of the

company. In other words, it covers all pipe, couplings, fittings, gate valves and gate boxes and so forth.

Q. How was the inventory taken in connection with the field line equipment?

A. With reference to pipe—that is, to the size and kind of pipe in respect to field lines, that information was secured from the records in the engineering department of the company and spot checked on the ground in the field. That is, after we have secured the size and length of the pipe, we made spot checks—and by that, I mean we drove out and checked approximately forty to fifty per cent of all well lines to determine the correctness of the records found in the engineering department. All above-ground structures, such as gate boxes and gate valves, blow-offs, and drips, were inventoried on the ground, to determine the exact description [fol. 360] of all the fittings and all gate valves, and to determine the size of the gate boxes in order to compute the amount of concrete or lumber necessary and to compute the reproduction cost of that item. In order to ascertain the correct trench depth and the soil classification and to determine the probable cost of excavation, 1412 bar tests were made on all well lines laid prior to June 1, 1930. Now, as previously testified to in connection with my qualifications, in the early part of 1930 I installed so-called daily progress reports and so all well lines laid from that date on down, it was not necessary to make any tests for information as to the yards of excavation or the kind of soil, which was secured from the daily progress reports.

Q. Please explain to the jury what you mean by bar tests; you say you made more than 100 of them in connection with the work of ascertaining the depth of the trench and the character of soil on this excavation—that is, what is a bar test?

A. A bar was driven to the top of the pipe and measurement was taken to determine the amount of cover—or rather, the lineal inches of cover over the pipe. Say that cover was twenty inch and then to that cover we added the outside diameter of the pipe. On four inch pipe, the outside diameter being four and one-half inches, we would have arrived at a trench depth of twenty-four and a half inches. In connection with where solid rock was encountered, we added on two inches additional, to allow for bedding beneath the pipe.

Q. What do you mean by bedding beneath the pipe, in solid rock?

A. Steel pipe, either painted or wrapped, can not be laid [fol. 361] on top of the solid rock, as it would damage the protection on the pipe, and consequently additional excavation has to be made and loose earth or soil placed on top of the solid rock before the pipe can be placed in that ditch.

Q. How many individual field lines are there in your inventory as set forth in Exhibit 28, and of what general size are those field lines?

A. There are a total of 653 individual field lines, ranging in length from ten feet on to as much as 5,000 feet, and in size from two inch to six inch, inclusive.

Q. When you speak of the size of the pipe as being from two inch to six inch, do you refer to the diameter of the pipe?

A. That is correct.

Q. Now, the next classification of property, Mr. Steinberger, appears to be transmission system measuring station land, including improvements. How did you obtain the inventory of the transmission system measuring station land?

A. The inventory of the transmission system measuring station land was secured from the records of the company, and which records are kept in the land department of the company. That is, as to the description of the land proper. As to the improvements, however, an actual field inventory was made on the ground to determine the exact description as well as quantities of all materials for each class of improvements, such as the number of fence posts, lineal feet of wiring in the fences, amount of lumber or lineal feet and [fol. 362] size of pipe for bridges, size and kind of culverts and the description of various improvements such as the grading of yards, the number of yards of concrete and all that information was secured on the ground. Now, transmission system measuring station land covers land owned by the company and on which are located measuring stations, or rather, where gas is measured before it is delivered to either an industrial consumer or to a distribution system.

Q. Now, included in the improvements on this transmission system measuring station land, are there such items as shrubs and bushes which are planted around these stations?

A. Yes. The improvements also include hedges, shrubbery, trees and various plants for the beautification of the sites.

Q. The actual inventory of the measuring station land was obtained from the land department records of the company, was it not, Mr. Steinberger?

A. It was, yes.

Q. Now in connection with the transmission system measuring station leaseholds, including improvements, did you get your inventory in substantially the same way as you secured it for the transmission system measuring station land?

A. I did. I secured the information with reference to the inventory as well as the inventory of the improvements and description of the land and leaseholds, in the same manner as I testified to previously in connection with the transmission system measuring station land.

Q. By the way, how many units of measuring station land are there?

[fol. 363] A. There are a total of 224 units of measuring station land.

Q. And how many units of leaseholds are there, or how many different leaseholds?

A. There are 62 different parcels of leaseholds.

Q. Under the heading of other transmission system land, including improvements, which next appears in your summary of the inventory, will you please explain what land is included under that classification?

A. That classification of accounts covers land owned by the company in the transmission system, on which are located miscellaneous structures. That is, all structures other than transmission system measuring station structures—that is, such structures as cottages for line walkers, cottages for pipe line foremen, and garages, warehouses and all miscellaneous transmission system structures.

Q. What is included in the classification of property styled "Other transmission system leaseholds, including improvements?"

A. This account covers again all land leased by the company on which are located miscellaneous structures, which as I testified to before, line-walkers' shacks, pipe line foremen's cottages, garages, warehouses and so forth; in other words, all structures necessary in the transportation of natural gas.

Q. From what source did you obtain your inventory of the transmission system rights of way?

A. Transmission system rights of way was determined by taking the total length of the pipe line; in other words,

[fol. 364] transmission system rights of way covers the land on which is located the so-called company's transmission lines and the quantities or lineal feet or rods, which is the generally adopted unit, is generally secured by taking the total length of the pipe line, deducting therefrom all highways and public road crossings for which no right of way had to be secured. The generally accepted width of the right of way is twenty feet.

Q. How many units of individual pipe line rights of way are included in your inventory?

A. There is an inventory of 408 individual units of rights of way included in Exhibit 28.

Q. Now from what source did you obtain your inventory covering transmission system measuring station structures?

A. Transmission system measuring station structure inventory was secured on the ground by physical inventory of all component units comprising the structure, such as I previously testified, we determined the lineal feet of 2 by 4's for rafters and lineal feet of four by four or six by sixes for sills; the number of squares of corrugated iron for sides; the size and kind of doors; size and kind of windows and number of coats of paint, both inside and outside; kind of foundation and if concrete the number of cubic yards of concrete necessary, or the number of cubic yards of gravel, if it was gravel, and if it was of concrete, the number of square feet and thickness of the floor. In other words, every individual unit or component part of the property was checked separately in order to apply a unit cost to each item that comprises and finally makes up a structure.

[fol. 365] Q. How many individual structures are included under the classification of Transmission System Measuring Station Structures?

A. There are a total of 519 individual transmission measuring station structures.

Q. How did you take your inventory covering Other Transmission System Structures?

A. The inventory of Other Transmission System Structures was taken in the same manner as I testified to in connection with the Transmission System Measuring Station Structures; namely, by an actual count of all quantities, and a description of every individual unit of material constituting a complete structure, except on standard size cottages. The last approximately five or six years the Lone Star Gas Company has standardized on either four- or five-

room cottages, and in that case we did not make a complete inventory of each individual cottage, but took a certain per cent of the various standard size cottages and applied the number of quantities to the remainder of the standard size structures. Now, as to depth of water wells, which are generally located on so-called pipe-line camps, that was taken from the Company's records. In other words, I checked back and secured the information from the original invoices or drilling records of that particular well, and all records, of course, are kept in the Accounting Department of the Company.

[fol. 366] Q. How many structures are included in the heading under "Other Transmission System Structures"?

A. There are a total of 284 individual units included in this classification of property.

Q. How did you take your inventory covering Transmission System Measuring Station Equipment?

A. The inventory on the Transmission System Measuring Station Equipment was made on the ground by a physical count of all units, as well as a complete description of all meters, regulators, gate valves, gauges, and all other pertinent equipment necessary in the measuring of natural gas before its delivery either to a distribution company or an industrial consumer.

Q. How many industrial—or how many transmission system measuring station installations are included in your Exhibit 28?

A. There are a total of 535 such units of property included in this classification of accounts.

Q. Now, Mr. Steinberger; what is the largest item of property, as far as value is concerned, among the several classifications of property going to make up the property involved in this case?

A. Transmission line equipment.

Q. Mr. Steinberger, have you brought with you a map showing the transmission line equipment of the Company?

A. I have.

[fol. 367] Q. Mr. Steinberger, is this a map showing the Lone Star Gas Company's pipe line system in the states of Texas and Oklahoma?

A. It is.

Mr. Griffith: We offer the map so identified by the witness in evidence.

(Thereupon the map referred to above was marked for identification as Defendant's Exhibit No. 29.)

Q. Mr. Steinberger, I will ask you to refer to the Lone Star Gas Company's pipe line system map, which has just been introduced in evidence and labeled "Defendant's Exhibit 29. Will you please point out to the jury the location of the major units of the pipe line system?

A. The pipe line system of the Lone Star Gas Company is divided into various sub-systems, each system being prefixed with a letter such as "A" System, "B" System, "C" System, and so on down. In each case where a main transmission line has a letter "A", "B", or "C", the tap-lines leading from that main line have a sub-prefix or letter as "A-1", "A-2", "A-3", and so on. If a main transmission [fol. 368] line enters a so-called gas field, then from that main line leads gathering lines into the field, they have prefixed a letter such as "AA", "AB", "AE", and so on.

We have here the "A" system beginning in Wheeler County, or the Shamrock Field. It gathers its gas into that line "A" from the various gathering lines "AA", "ABA", "ACA", "AFA", "AK", and so on, which gathering lines receive their gas from various field lines; so the field lines get their gas from the well, and transport the gas into the so-called gathering lines, and the gathering lines carry the gas into the main transmission line.

The Line "A" beginning in Wheeler County, enters Oklahoma northeast of Wellington, goes through Oklahoma, and re-enters Texas northeast of Childress, and goes on down through Chillicothe, Tolbert and Vernon, and then a line goes back into Oklahoma at Oklaunion, Texas, crossing the Red River, delivering gas to Davidson, Frederick, Tipton, Manitou, and Mountain Park, Oklahoma. The line going from Frederick north into Mountain Park is designated Line A1-4. The main transmission line from Oklaunion south continues on down to Harrold, Electra, Iowa Park, and North Wichita, and delivers its gas into the Petrolia Compressor Station, from where it is delivered in either direction south to Fort Worth or north—it can go [fol. 369] either direction from that compressor station. Line B going from Petrolia, consisting of two lines, the original line built in 1909 being a 16-inch Dresser coupled line, and also 2nd-B, being a 20-inch welded line. They lead from Petrolia south through Hentietta, Bellevue, Bowie,

and so on, and the Line B, 16-inch, going to Fort Worth, and terminating there at the North Fort Worth Measuring Station. Line 2nd-B, 20-inch, branches off north of Rhome, and joins what is known as Line C at the so-called B-C-J Junction at Birdville, Texas. Line C, constructed originally to take gas from Line B at the North Fort Worth Measuring Station and carry gas east into Dallas, goes through Irving. Line E begins at Gainesville, going east through Whitesboro and Denison, furnishing gas also south to Sherman, and going east on through Bonham, and Paris, Texas, as far east as Clarksville, Texas. The line leading into Oklahoma approximately 5.7 miles east of Denison and going up to Durant and Caddo, Oklahoma, is known as line E5. Line E16 branches off at Paris, cross the Red River, and furnishes gas to Hugo, Oklahoma. Line F receives its gas from Line G at Gainesville, and carries the same south and furnishes the towns of Sanger and Denton, and has a terminus with Line C at Irving, Texas. Line G takes up gas in the so-called Fox and Loco fields of Oklahoma, and carries gas north as far as Purcell, Oklahoma, and Sulphur, [fol. 370] Oklahoma, as well as having a 16-inch line going south and entering Texas approximately 16 miles north of Gainesville.

Q. How many miles?

A. Approximately 16 miles north of Gainesville. From Gainesville a line marked G-3 carries gas to the towns of Muenster and Saint Joe; and Line G carries its gas into Lines E and F at Gainesville. The "H" system consists of two lines—Line H and 2nd-H, both 12-inch lines. Line H receives its gas in the so-called Duncan Field, in Stephens County, Oklahoma; Line 2nd-H receives its gas in the so-called Chickasha Field of Oklahoma, in Grady County. Both lines carry the gas south to Walters, Oklahoma, and the Southwest Gas & Electric Company carries gas to Temple, Oklahoma, and Byars and Petrolia, Texas. Both of these lines enter Texas over the Red River what *what* is called a suspension bridge north of Byars—approximately four miles north of Byars—and deliver their gas into the Petrolia Compressor Station.

The "J" System begins and receives its gas at Joshua, Texas, Located in Johnson County, and furnishes such towns as Burleson, Everman, and delivers gas to South Fort Worth to what is called the Brambleton Station, with a line branching off at Forest Hill furnishing gas to the

towns of Arlington, and Grand Prairie, and connecting with Line C at Irving, Texas.

The "K" System principal transmission line, being an [fol. 371] 18-inch Dresser coupled line, secures its gas in the West Texas area, such as Stephens, Palo Pinto, Eastland, Erath, and Callahan Counties. The principal line, Line K, goes east and terminates at Joshua Compressor Station. Line K-C going west from the so-called West Texas area furnishes gas to the towns of Baird, Clyde, and Abilene, and on west to Sweetwater, with a terminus at Colorado; and a branch line being Line K-C going into Scurry County, Texas.

Line "L", or the "L" System, begins at the Joshua Compressor Station, and going south as far as Round Rock, Texas, this being a 12-inch line as far as Waco, with a 16-inch line to Temple, and from there it reduces to as low as a 4-inch line to Round Rock. It has branches going west to Gatesville, as well as lines branching off at Waco going south through Bremond, Hearne, and Marlin, and on into College Station.

Line "M" receives its gas at what is known as the "L-M" Junction, approximately 7 miles south of Joshua, and carries gas to the towns of Maypearl, Nash, and Emhouse, into Corsicana, and east as far as Kerens, and south as far as Groesbeck and Teague.

Line "O", or rather the "O" system, consists of a considerable number of gathering lines in the West Texas area, in Erath, Palo Pinto and Stephens Counties, delivering by scattered lines into the main line, Line "O" being an [fol. 372] 18-inch Dresser couple line running parallel with Line K from Gordon, Texas, to Joshua. Line "O" then continues from Joshua on east to Dallas, furnishing gas to Dallas at the so-called Lisbon Measuring Station, then going east from there into Greenville, and as far as Sulphur Springs, in Hopkins County, with numerous small tap lines furnishing gas to numerous towns south of Dallas, as far as Athens and Malakoff, and to numerous towns in East Texas as far as Cooper, Texas.

Next is the "R" System located in Runnels, Coleman and Brown Counties. It receives its gas in the so-called Coleman Field, and furnishes gas to the towns of Winters, Ballinger, and also to the Community Gas Company's line west of Brownwood.

We then have what is called a numbered system. Those

were systems of pipe lines that were secured in 1927 from the Texas Company. Most of these are major gathering lines in the West Texas fields. Due to the fact that the West Texas Field is so densely covered with pipe lines we are unable to locate them all on the map.

Finally, there is the T. P. U. System, which again constitutes a number of connected lines in West Texas, and were secured from the Texas Public Utilities Company in 1930 or 31.

That constitutes the major pipe line or transmission line equipment of the Lone Star Gas Company.

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[fol. 373] Q. Mr. Steinberger, how were quantities of excavation determined when excavation would be necessary in connection with the digging of the ditches in which to place these pipe lines?

A. The yardage of trench excavation, as well as the segregation between hand and machine excavation in the various classes of soil in which the transmission lines are located, was secured from so-called bar test—that is, that information was secured on all the lines constructed prior to December 31, 1929, by bar test. As I previously explained in connection with the field line equipment, a bar test was driven over the pipe line and a measurement made of the depth, the bar sunk to the top of the pipe, and the depth of it added [fol. 374] to the outside diameter of the pipe, plus, as I have previously testified, a small percentage for clearance where such pipe lines were laid in solid rock. In that manner we arrived at the trench depth. These tests were made every five hundred feet. In order to determine the amount of rock, as well as the depth at which rock would be encountered, it was necessary to make a similar bar test on the side of the trench; in other words, we went to the side of the trench approximately two feet and again drove the bar to the depth where it encountered rock. In that manner we were able to calculate, of course, the exact yardage of earth and rock excavated. In order to make this clear, let's assume that it was a total trench depth of sixty inches, which is generally the trench depth of eighteen and twenty inch lines. If we found by the tests made at the side of the ditch that rock was being encountered at the depth of thirty inches, we could tell by the kind of backfill whether it was thin ledges of rock or solid rock. We thereby knew if we

found rock at thirty inches, from thirty inches on down it would be solid rock. Thereby we were able to determine the exact yardage of hand excavation as well as the machine excavation. At that time we also made tests as to the exact amount of clearing that was necessary to be done—that is, the removal of trees, shrubs, bushes, boulders and large rocks and so on—and took a general note of the contour or topography of the territory through which the pipe lines were laid, to determine whether the ditches could be dug [fols. 375-383] with the use of a ditching machine or whether it was necessary to be performed by hand excavation. We made a total of 30,444 bar tests on all the lines that were constructed prior to December 31, 1929. Now, on all the lines constructed since January 1, 1930, or December 31, 1929, the yardage of excavation, as well as the classes of soils encountered, whether hand or machine excavation was necessary, as well as the lineal feet, and yards of right of way necessary to be cleared by cutting down timber and removing large boulders and so on, all that information was secured from daily progress reports of construction which I testified to with reference to my qualification.

Q. How many individual transmission lines are there in the Lone Star Gas Company pipe line system and which are set forth in detail in Exhibit 28?

A. There are a total of 496 individual transmission lines in this group of property.

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[fol. 384] Q. I believe you testified early this afternoon that the original field inventory was made as of December 31, 1931?

[fol. 385] A. That is correct.

Q. But in connection with Exhibit 28 you have brought that inventory down to date?

A. I have.

Q. That is, down to January 1, 1933?

A. Yes, sir.

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Q. Now, how did you add to your December 31, 1931 inventory the net additions which were made to the Company's property between that date and January 1, 1933?

A. An analysis was made of the Company's investment

record; that is a record on which are recorded all items of property, particularly as to the cost of those properties, but sometimes lacked the description; well, we merely made an analysis of the investment record, and then checked that in the field to determine the exact description as well as the number of quantities and kinds and classes of quantities added to the property since January 1, 1932. We also made a record of the various property retirements, eliminating them from the inventory that was made as of December 31, 1931. We, therefore, took the inventory made December 31, 1933, and added to it all net additions—that is, all quantities of net additions, and deducted from it all retirements of [fols. 386-389] property—that is, quantities of retirements of property; and then went into the field and rechecked the entire inventory in order to get a complete or as complete a description and inventory as it was possible to get.

Q. And when was that final check made in the field of that whole inventory?

A. That final check was made in March, April and May of 1933.

Q. So then the inventory as of January 1, 1933 was not completed in the field until approximately the end of May, 1933?

A. If my memory serves me correctly, Mr. Griffith, we completed it on the 20th day of May, 1933.

Q. The 20th day of May, 1933?

A. Yes, sir.

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[fol. 390] Cross-examination.

Questions by Mr. Fitzhugh:

Q. At the hearing had before the Railroad Commission, Mr. Steinberger, the exhibit introduced by the Company showing the same sort of data as is covered by the exhibit just introduced—Defendant's Exhibit No. 28—was compiled by yourself and Mr. Connor, wasn't it?

A. The inventory, Mr. Fitzhugh, both the field and office inventory, was compiled under my direct supervision. Mr. Connor and myself worked jointly in connection with unit costs.

Q. And Mr. Biddison was not connected with you in the preparation of that exhibit, was he?

A. He was not.

Q. Now, this appraisal which you have just introduced is an entirely new one, isn't it, and different from the old one introduced before the Commission?

A. It is different to the extent, Mr. Fitzhugh, that it has certain property added as well as certain property eliminated which has been retired since the original inventory was introduced before the Commission.

Q. And has different unit costs, does it not?

[fol. 391] A. Yes; it has different unit costs, because—

Q. And different prices for materials?

A. Prices of materials have changed, labor rates have changed, insurance has changed.

Q. Yes, sir. Now, as I understand it, you are vouching only for the quantities of units appearing in the inventory?

A. That is correct, and the proper application of the unit costs to such quantities.

Q. And I believe you say that those unit prices were given to you by Mr. Connor and Mr. Biddison; is that correct?

A. No, by Mr. Biddison.

Q. By Mr. Biddison only?

A. Yes, he is responsible for the unit prices.

Q. I see. Now, what is it that Mr. Connor has had to do with the preparation of the exhibit?

A. Well, Mr. Connor—we consulted with Mr. Connor at certain times in connection with certain unit costs, but Mr. Connor is primarily responsible for the so-called construction overheads, as well as non-physical values.

Q. Yes, sir; now, I believe you stated that the barring tests made on pipe were made under your direction?

A. Yes, they were made under my direction and under the direction of Mr. Harrison Smith, of Sanderson and Porter.

Q. And those barring tests were made on pipe constructed before what date?

A. Before December, 1929.

[fol. 392] Q. December, 1929. Now, since December, 1929, where there has been new construction, your Company has kept track of the actual quantities, hasn't it?

A. Yes; there's about three or four months where we—between December—the date of the daily progress reports—were not installed until either April or May, 1930, and there were a few small lines built, like Line G-3, going westwardly from Gainesville to St. Jo, and another line—a few small tap lines on which we subsequently made these barring tests;

we didn't have the daily progress reports, and subsequently made these barring tests.

Q. Now, in the appraisal submitted there are quantities of three different kinds of excavation, are there not—hand, rock, and machine excavation?

A. Yes, sir.

Q. Are you responsible for the different quantities and for the different kinds of excavation as shown in the exhibit?

A. I am jointly responsible with Mr. Biddison; Mr. Biddison made certain corrections to the quantities which were introduced in connection with the inventory and appraisal that was presented before the Railroad Commission.

Q. What corrections did Mr. Biddison make?

A. I do not recall at this time. Mr. Biddison can recall and give you them.

Q. Now, if I understand, he made corrections to the quantities you found, using as a basis the results of your [fol. 393] barring tests up to December, 1929, and the studies which you made of actual quantities on the lines constructed since December, 1929?

A. Yes; the only change Mr. Biddison made was that I had certain tap lines—

Q. Certain what?

A. Tap lines—short lines—in other words, a pipe line leading from a transmission mainline into a distribution system, for which I figured machine excavation, which Mr. Biddison, in collaboration with Mr. Elmer Smith and Mr. Vandercoop, who is the General Construction Superintendent of the Company, decided on a reproduction it would not be feasible and economical to transport a ditching machine for this kind of work and for that particular line.

Q. I suppose Mr. Biddison will be ready to testify when he takes the stand, as to those changes?

A. Yes.

Q. And why he made those changes?

A. That is correct.

Q. Now, do you have the results of the studies that you made by the barring tests with you now?

A. Yes, they are somewhere in the work papers.

Q. Do those studies show the per cent of excavation of each kind as found by the barring tests?

A. Yes.

[fol. 394] Q. What was the per cent found for hand excavation by the barring method?

A. Give me some time now. (Witness makes calculation.)

A. You mean the entire system, Mr. Fitzhugh?

Q. Yes, sir.

A. Hand excavation—to bottom of ditch 5.94 per cent; to top of rock 1.77 per cent—that is all earth excavation. Hand rock excavation 11.11 per cent.

Q. What are the percentages for machine excavation?

A. The percentages for machine excavation were—to bottom of ditch 79.59 per cent; and to top of rock 1.59 per cent.

Q. Do those percentages, now, add up to 100 per cent?

A. Yes, sir.

Q. Now, in the studies you made of construction since December, 1929, and where an actual measurement was made, what are the percentages you found?

A. I do not have the percentage over all, Mr. Fitzhugh, because I didn't—I applied the percentages to each individual line, and I didn't compute them as a total.

Q. You did study them by lines, you say?

A. Yes, sir.

Q. Now, on Line Second B, that was one of the lines studied, was it not?

A. Yes, sir.

Q. What are the actual percentages found on that line?

A. Machine excavation 90.10 per cent, and earth excavation 83/100 of one per cent, and rock excavation 9.07 per cent.

Q. That was by actual measurement?

[fol. 395] A. That was by the actual experience of the Company.

Q. Yes, sir. Now, Line B—so the quantities for Line B were found by the barring method, were they not?

A. Yes, sir.

Q. What were the quantities of Line B?

A. Machine 76.92 per cent, hand earth 11.97 per cent, hand rock 11.11 per cent.

Q. Now Line B and Line Second B originate at Petrolia and run along side by side along down until they split at some point just a little bit north of Fort Worth, do they not?

A. No, sir, they run—they split approximately four miles north of Rhome, Texas, which is about thirty miles north of Fort Worth.

Q. Yes, sir; but they do run side by side for quite a ways, do they not?

A. Yes, sir.

Q. For about how long—what distance, approximately. You needn't go to the trouble of looking it up, if you can give it anywhere near the approximate distance.

A. Well, approximately 70 per cent of the distance.

Q. For how many miles, about. (Witness makes calculation.) Well, let that question go. Mr. Steinberger, there is no use killing so much time; in looking at the map, why, in just a moment maybe we can get the same thing.

A. I will have it in just a second. There is a total of 98.06 miles in the Line; Second B and Line B, 16-inch, run parallel for a distance of 62.12 miles.

[fol. 396] Q. Looking at the map here, Mr. Steinberger, these lines start at Petrolia, do they not?

A. Yes.

Q. And run together until they get to this point, which I believe you say is near Rhome—North of Rhome?

A. Yes, half way between Rhome and Decatur.

Q. And that distance is some sixty miles, you say?

A. It is 62.12 miles, which is $63\frac{1}{2}$ per cent of the total distance.

Q. How far apart are those two lines, over the distance where they are together?

A. Approximately fifteen to twenty feet.

Mr. Griffith: That is, you mean down to this point between Rhome and Decatur, where they separate?

A. Yes, where they run parallel they are 15 to 20 feet apart.

Q. After they separate at Rhome, what is the furthest distance they get apart, just approximately?

A. Approximately twenty miles.

Q. Now on these two lines, where you made the calculation by actual measurement, you found less than one per cent for hand excavation, I believe .83 per cent, to be exact?

A. Yes.

Q. And where you made it by the barring method, you found 11.97 per cent—almost 12 per cent, didn't you?

A. Yes.

Q. Doesn't that tend to show, Mr. Steinberger, that the barring method is rather an inaccurate method, as compared with the actual measurement?

[fol. 397] A. It does not, Mr. Fitzhugh. Knowing the country as I do, and particularly along there, those figures are as nearly correct as possible, and I think they are cor-

rect because where Line Second B branches off from Line B, it goes into open farming country, whereas Line B continues in rolling, hilly, rocky country, particularly around Rhome; but Line Second B leaves all that rock whereas Line B 16 inch continues in that rocky territory down from Rhome through Saginaw, and does not get to the same kind of country Second B has until South of Saginaw.

Q. On Second B, practically all of your hand excavation was found on the portion after it splits off at Rhome?

A. No doubt it was, yes. I haven't got the map before me at this time but in fact it does not hit rough country until it gets south of Saginaw—or I mean, south of Decatur.

Q. Do you have the figures for stations where you made the barring tests on Line Second B?

A. Here?

Q. Yes.

A. No, I have not, Mr. Fitzhugh.

Q. Could you find for us and bring here, Mr. Steinberger, the results of your barring tests on that portion of the line, particularly of Second B, after it splits off from Line B at Rhome, and Line B?

A. Do you mean the original prints?

Q. The original records you had from those barring tests. [fol. 398] A. I may be able to locate them at this time; blue prints have been stacking up in our office so heavily lately that a number of them have been destroyed; I don't know whether these particular prints were destroyed or not, but I will be glad to make a search for them when I return to Dallas.

Q. If you can find them, will you furnish those?

A. I will be glad to, yes.

Q. What was the total number of cubic yards of excavation determined by the use of the barring method?

A. The total number of cubic yards determined by the barring method was 2,691,767.

Q. And what is the total number of cubic yards of excavation on the whole system?

A. I do not have that figure.

Q. Do you know the yardage then for the amount that you found by actual measurement?

A. I may have the total yards in the system, Mr. Fitzhugh—no, I don't have that with me. I have it in Dallas.

Q. Will you furnish that record for me?

A. Yes.

Q. Mr. Steinberger, will those two figures, added together, give you the total yardage in the whole system?

A. Which two figures, Mr. Fitzhugh?

Q. The amount you found by the barring tests and the amount you found by the actual measurement?

A. I don't have the total yardage found by actual measurement, [fol. 399] but I do have the total yardage found necessary and included in the reproduction cost appraisal for the whole Lone Star Gas Company system.

Q. If you have the total for the system and subtract the total found by the barring method, wouldn't you have left the amount you found by actual measurement?

A. Yes.

Q. Then if you will give us the total for the whole system, we will probably have the figure we want, won't we?

A. Yes. I could get that figure, but it will take considerable calculation. I have the money value, but not the total cubic yards. I could have it in the morning.

Q. All right; that's all right. Now, Mr. Steinberger, do you have the detail of the findings you found by the barring method on Lines H, Second H and G?

A. Yes.

Q. Do you have that with you now?

A. Yes. Line G, cubic yards of excavation, machine earth to bottom of ditch, 65,061.3, or 83.15 per cent.

Mr. Griffith: That is cubic yards you are talking about?

A. Yes, 65,061.3 cubic yards, or 83.15 per cent of the total excavation. Machine earth to top of rock, 5,506.33 yards, or 7.04 per cent of the total. Hand excavation, earth to bottom of ditch, 235.49 yards, or .3 per cent. Earth above rock, 171.31 cubic yards, or .22 per cent. Rock excavation 7,271.4 yards or 9.29 per cent, giving a total of 78,245.83 yards of excavation.

[fol. 400] Q. Are those figures for Line G alone, Mr. Steinberger, or for the whole G system?

A. It is for Line G, the 16 inch line running south from Dixie to Gainesville. Line H: Machine excavation to bottom of ditch, 44,721.87 yards, which is 94.98 per cent. Machine excavation to top of rock, 478.06 cubic yards, which is 1.02 per cent. Hand earth excavation to bottom of ditch, 1000.42

cubic yards which is 2.12 per cent of the total. Hand earth excavation to top of rock, 75.48 cubic yards which is .16 per cent, and rock excavation, 810.73 cubic yards, which is 1.72 per cent, or a total cubic yards of excavation of 47,086.56.

Line Second H: Machine excavation to bottom of ditch, 40,254.18 cubic yards, which is 95.67 per cent of the total, and machine excavation to top of rock, 454.63 cubic yards which is 1.08 per cent of the total. Hand earth excavation to bottom of ditch, 774.36 cubic yards which is 1.85 per cent of the total, and rock excavation, 592.35 cubic yards, which is 1.4 per cent of the total; or a total of 42,075.52 cubic yards.

[fol. 401] FRANK E. KENDRICK, a witness for defendant, being by the Court first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Griffith:

Q. State your name, please?

A. Frank E. Kendrick.

Q. Where do you live, Mr. Kendrick?

A. Dallas, Texas.

Q. What is your business or profession?

A. Chief geologist, Lone Star Gas Company.

Q. Are you a graduate of any accredited school of higher learning?

A. I am a graduate of the University of North Carolina.

Q. What degree did you receive at that institution?

A. A. B. degree.

Q. Did you specialize in geological work?

A. I did; I specialized in geological work and petroleum engineering.

[fol. 402] Q. When did you graduate from the University of North Carolina?

A. 1917.

Q. Since that time, in what work have you been engaged?

A. I have been engaged entirely in geological work for oil and gas companies.

Q. Following your graduation from the University of North Carolina, will you please tell in detail the general work which you did?

A. The first work I did was a year's work as Assistant Geologist at the University of North Carolina. After leaving that institution, I was employed by the Empire Gas & Fuel Company of Bartlesville, Oklahoma, as field geologist. I was with this company about a year and a half, at which time I left their employ and went with Marlin Refining Company of Ponca City, Oklahoma. I remained with this company approximately six months, at which time I left the employ of that company and became employed by Lone Star Gas Company.

Q. In what year was that, Mr. Kendrick, that you commenced your employment with Lone Star Gas Company?

A. In 1920.

[fol. 403] Q. And since the year 1920 have you been continuously identified with the operations of the Lone Star Gas Company?

A. I have.

Q. What has been the general work which you have done for the Lone Star Gas Company in the last fourteen years?

A. I have been engaged almost entirely in geological work. I have done some engineering work, along the lines of making appraisals.

Q. Did that complete your answer?

A. Yes, sir.

Q. When you first went with the Lone Star Gas Company I believe you were Assistant to the Chief Geologist, Mr. William Kennedy?

A. That is correct.

Q. Mr. Kennedy died at what time?

A. 1926.

Q. Following his death did you become Chief Geologist of the Lone Star Gas Company?

A. I did.

Q. In that capacity what has been the general nature of your work?

A. The general nature of my work with the Lone Star Gas Company has been practically the same as that of any geologist connected with an oil company. In other words, it is my duty to prospect for gas—a gas supply for the Lone Star Gas Company. We are not only involved in finding [fol. 404] supplies of gas but in locating gas wells, and keeping track of all operations concerned with the Company

and with all outside operators in the territory in which the Lone Star Gas Company operates.

Q. Are you familiar with the drilling of wells in the several fields where the Lone Star Gas Company operates?

A. I am.

Q. And with the extent of the development of oil and gas in those several fields?

A. That is correct.

Q. In connection with Mr. J. H. Dunn have you prepared an exhibit for presentation in this case showing your estimate in volume of the natural gas reserves of the Lone Star Gas Company?

A. I have.

Q. When I refer to the natural gas reserves of the Lone Star Gas Company do you understand that I refer solely to the reserves which are owned by the Company?

A. That is correct.

Q. Do you have with you the exhibit which you and Mr. Dunn have prepared?

A. I do.

Mr. Stout: We make the same objection to this as we did to the others. It shows on its face no segregation as between Oklahoma and Texas. You have all of it together, do you not?

[fol. 405] A. Ours is segregated.

Mr. Stout: Between the two states?

A. Yes, sir.

Mr. Stout: Then we might not have an objection to it.

The Court: You got what you wanted this time.

Mr. Stout: I think so, yes, sir.

The Court: Do you care to withdraw the objection?

Mr. Stout: I would like to look at it, first; but I think so, probably.

The Court: If it does not show the segregation between the states you may have your exception; if it does show it, then you can withdraw it.

Mr. Stout: All right.

Mr. Griffith: It is not separated as to states; that would be a mathematical calculation; but it is separated as to fields in the respective states, and you just have to make a mathematical calculation to get the separation by states.

Q. Mr. Kendrick, is this the report to which you refer, it being styled on the title cover, "Lone Star Gas Company—Report and Findings of Gas Reserves, January 1, 1933. J. H. Dunn, Production Engineer, F. E. Kendrick, Geologist, Dallas, Texas"?

A. That is correct.

[fols. 406-408] Mr. Griffith: We offer this Report in evidence, and ask that it be marked Defendant's Exhibit Number 30.

(Thereupon the Report referred to above was marked for identification as Defendant's Exhibit No. 30.)

Q. Mr. Kendrick, what has been the extent of your participation in the preparation of the Report and Findings of Gas Reserves of the Lone Star Gas Company, as of January 1, 1933, which has just been introduced in evidence as Defendant's Exhibit No. 30?

A. For this exhibit I furnished all geological information, all geological maps, well information, logs of wells, sand porosities, sand thicknesses, and various other data that is necessary in the computation of natural gas reserves.

Q. If we refer to page 3 of Exhibit 30, Mr. Kendrick, does that show the pipe line system of the Lone Star Gas Company together with the several fields wherein the gas company owns gas reserves?

A. That is correct.

Q. The gas reserves are marked in yellow; is that correct?

A. Yes, sir; that is correct.

[fol. 409] Q. What is set forth on page 6 of Exhibit 30?

A. On page 6 we have a lease map of the Wheeler County reserves of the Lone Star Gas Company, together with the line showing the proven area of the Wheeler County end of the Panhandle gas field.

Q. Is that black line which meanders around the producing and undeveloped leaseholds indicated by the diagonal marks the line to which you refer?

A. That is correct.

Q. What do the diagonal marks on that map indicate?

A. The diagonal marks indicate the leases held and owned [fols. 410-417] by the Lone Star Gas Company.

Q. As of January 1, 1933?

A. That is correct.

[fol. 418] Q. In general, may it be said, Mr. Kendrick, that you were responsible for all of the geological data which is set forth and contained in Defendant's Exhibit 30?

A. That is correct.

Q. And you worked in co-operation with Mr. J. H. Dunn in the preparation of this exhibit and the findings therein contained, for the purpose of making a determination of the volume of gas reserves owned and controlled by the Lone Star Gas Company?

A. That is correct. I furnished all of the geological [fol. 419] information, and also other information that would come under the jurisdiction of the geological department in assisting the Production Engineer in calculating the reserves under the leaseholds which are owned by the Lone Star Gas Company.

Q. And was it your work in connection with the preparation of this report and the findings contained in Exhibit 30 to carefully outline the proven and developed gas areas where the Company owns and operates gas leaseholds and reserves?

A. That is correct. The information shown in this exhibit is based on my experience in that particular field over a period of about fourteen years, and I have been directly concerned with all of the operations carried on by the Lone Star Gas Company in all of these fields since 1920.

Q. To the best of your knowledge and belief is all of the geological data contained in Exhibit 30 correct?

A. That is correct; that is, within the bounds of human error—the human element that enters into any calculation of this nature.

[fol. 420] Cross-examination.

Questions by Mr. Fitzhugh:

Q. Mr. Kendrick, on page 7 you show a curve entitled, "Petrolia Field Proper, Daily Delivery Rate Decline Curve." Did you prepare that?

A. No, sir; I did not prepare that, Mr. Fitzhugh. That was prepared by Mr. Dunn.

Q. That is Mr. Dunn's work?

A. Yes, sir.

Q. You would not be able to tell the amount of production by years from the Petrolia Field, would you?

A. No, sir; I would not. That does not come under my work at all.

Q. What percentage of the Company's gas reserves, as shown in your exhibit, are actually developed?

A. You mean what percentage of all the leaseholds we own?

Q. What percentage of the gas reserves you show in this exhibit are actual developed leaseholds?

A. I could not answer that right offhand. That would have to be calculated. I never have figured that out.

[fol. 421] Q. Well, you do include in this exhibit, Mr. Kendrick, both undeveloped and developed leaseholds?

A. That is correct, yes, sir.

Q. What percentage of the gas reserves shown in this exhibit are located within Texas?

A. Well, that can be determined by referring to the reserves as shown in the State of Texas, and also in Oklahoma. It would have to be worked out by taking these figures we have worked up for the two different states.

Q. Well, could you give the amount of production for any one year that came from the State of Texas?

A. No, sir; I could not give you that. Mr. Dunn, I imagine, would be in position to give you that. I don't have anything to do with that part of the operations.

[fol. 422] Q. Somewhere in the exhibit, Mr. Kendrick, you do show a summary sheet of the marketable gas reserves, don't you?

A. That is correct; yes, sir.

Q. Where does that appear?

Mr. Griffith: On page 26, Mr. Fitzhugh.

A. On page 26; yes, sir.

Q. Now, on page 26 you show the total reserves, do you not?

A. That is correct; yes, sir.

Q. That is not a summary of the marketable reserves themselves, is it?

A. You will have to ask Mr. Dunn that question. I didn't do that work at all. He will be able to answer all your questions along that line.

Q. Are you responsible for page 26?

A. No, sir, I am not.

Q. And you are not responsible for page 144, either?

A. No, sir; those are the results of his calculations, after I gave him the basic data with which to work.

Q. Yes, sir.

A. And I am not responsible for any figures showing reserves in this volume at all.

Q. Did you give him the basic data for the Petrolia Field?

A. No, sir; he worked that on the "Pressure Decline Method", and it was based entirely on the past performance of wells in that particular field.

Mr. Fitzhugh: That is all.

[fol. 423] J. H. DUNN, a witness for the defendant, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Griffith:

Q. Now, just face the jury direct and talk as loud as you can, Mr. Dunn.

A. All right, sir.

Q. State your name, please.

A. My name is J. H. Dunn.

Q. Where do you live, Mr. Dunn?

A. I live in Dallas, Texas.

Q. What is your business?

A. I am Chief Production Engineer for the Lone Star Gas Company.

Q. Are you a graduate of any accredited Engineering School?

A. I am a graduate of the Texas A. & M. College.

* * * * *

[fol. 424] A. All right. I am a graduate of the Texas A. & M. College.

Q. When did you graduate from A. & M. College?

A. I graduated in 1925.

Q. Following your graduation from A. & M. College, in what work did you engage?

A. Soon thereafter I engaged in work for the Lone Star Gas Company.

Q. And have been continuously identified with the operations of the Lone Star Gas Company since that time?

A. I have.

Q. Please tell the jury, in a general way, what has been the nature of the duties which you have performed for the Lone Star Gas Company.

A. When I first became identified with the Lone Star Gas Company I was engaged in work in the Gas Measurement Department; I started in that work as meter inspector on office meters, and I advanced in that Department over a period of some two and one-half years until I was Assistant Superintendent of Measurements for the Lone Star Gas Company. After that period of time I became engaged in production engineering work, and for a period of approximately six years I have been Production Engineer for the Lone Star Gas Company.

Q. Now, will you please explain to the jury, Mr. Dunn, [fol. 425] just what you do as Production Engineer for the Lone Star Gas Company?

A. As Production Engineer for the Lone Star Gas Company it is my duty to supervise the operations of all gas wells connected to the System, and to keep production records, gas well operation records, and histories, and any work in general in connection with the production of gas into the gathering lines of the Company.

Q. You have nothing to do with the actual drilling of the wells themselves?

A. No, sir, only in—after the wells are completed, my work really begins. The wells—the drilling of the wells is handled by the Production Department of the Lone Star Gas Company.

Q. Do you keep well production records covering the operations of the Company over a period of years?

A. Yes, sir, we keep all of the well production records continuously.

Q. And those well production records disclose what data, Mr. Dunn?

A. The well production records disclose data with reference to rock pressures of the wells; when the wells are shut in the pressure is gauged and the record recorded. Those records also include the production of gas, the well condi-

tion—and by “well condition” I mean whether or not the well—just how it acts and performs, and its condition to [fol. 426] produce gas, the gas that is available under certain conditions, and, in general, anything that a Gas Company might need to know about where and how they can get the gas, and anything the operator should know about how the well acts, in order that he can properly care for that well and keep it producing gas over the maximum period of time and recover the greatest possible amount of gas during its life.

Q. Now, Mr. Dunn, you have heard the testimony of Mr. Kendrick to the effect that he is responsible for all of the geological data and information set forth in Defendant’s Exhibit 30?

A. Yes, sir, I have.

Q. And that statement is correct, that he worked in co-operation with you in the preparation of this exhibit?

A. Yes, sir, that statement is correct.

Q. All matters set forth in this exhibit—that is, Defendant’s Exhibit 30—except the geological data, represents your own work and your own calculations and your own determinations?

A. Yes, sir, it does.

Q. And do you adopt the findings herein as representing your testimony and judgment.

A. Yes, sir, I do.

Q. Mr. Dunn, will you please tell the jury in a general way what you mean by a volumetric determination of gas reserves, and how that volumetric determination of gas [fol. 427] reserves is made?

* * * * *

A. I might best explain that to the jury by a reference to a simple problem which I think is illustrative of the problem of determination of gas reserves by volume. There is really nothing very mysterious about the calculation of natural gas reserves, but there are factors which must be taken into consideration which are not always definitely known. Therefore, we usual- refer to a report of this kind as an estimation [fol. 428] of gas reserves. Now, in order to figure the number of cubic feet of air in this room which exists at the atmospheric pressure it is only necessary to multiply the length by the breadth by the height in feet, and we have the number of cubic feet of air in this room at atmospheric pressure.

Boyle's law tells us that if we force enough additional air into this room to increase the pressure to two atmospheres, or twice the atmospheric pressure that exists here, which is approximately 14.4 pounds per square inch—if we force enough additional air in this room to get a pressure which would result in 28.8 pounds per square inch absolute, then we have twice the volume of air, or would have twice the volume of air which now exists. Now, if we had a pressure gauge connected to this room at the present time it would show zero pounds pressure, because the atmospheric pressure does not register on a pressure gauge, but in the gauge the pressure would be zero. The reason atmospheric pressure does not register on a gauge is because the pressure is the same inside and out, and the difference would be zero; therefore, the gauge pressure is zero, and the absolute pressure is gauge pressure plus absolute pressure, or 14.4 pounds per square inch.

Q. Well, if you put a pressure gauge on a flat automobile tire would you likewise get zero pressure?

A. You would likewise get zero pressure. In the case of the automobile tire the air is forced into the tire under [fol. 429] pressure; and if it is desired to carry 35 pounds pressure on the tire, that means 35 pounds gauge pressure. The absolute pressure would be 35 plus 14.4 or 49.4 pounds per square inch absolute. Now, then, as long as the automobile tire is air-tight the air will remain in there under that pressure, confined to the volume on the inside of the automobile tire. As soon as a puncture or some other leak occurs the tendency is for the air to flow out and equalize; in the case of a puncture the tire becomes flat and the pressure is equalized, and there is atmospheric inside and outside, and therefore we have no inflation. Now, the calculation of natural gas reserves may be compared, in a general way, to those simple examples. I want to make the point here, however, that when we speak of volumes of air or gas, we must know also the pressure at which that air or that gas exists, in order that we might determine the volume or the amount—the quantity of air or gas that exists in any definite reservoir or any definite container. A gallon of water is always a gallon of water, but a cubic foot of air at 144 pounds absolute pressure is equal to ten cubic feet of air at atmospheric pressure, or 14.4 pounds pressure.

Q. By the way, what is atmospheric pressure, anyhow; how is it determined?

A. Atmospheric pressure is the pressure that exists on every square inch of surface in this room. It is the weight of a column of air one square inch in cross section which [fol. 430] is on all surfaces exposed. It is determined by measurement in a manner like this: If we had a gauge here, and on one side of the gauge we had atmospheric pressure and on the other side we had vacuum, or no air, or no pressure, then the gauge would record your atmospheric pressure, and that is usually measured by a barometer and determined in that manner.

Q. Where is atmospheric pressure the greatest?

A. Atmospheric pressure is the greatest at sea-level, because—

Q. And, correspondingly, Austin being higher than sea-level, is atmospheric pressure less at Austin than at sea-level?

A. Yes, sir, it is less; I imagine the atmospheric pressure here is in the neighborhood of 14.4 pounds per square inch, while at sea-level it is 14 and 7.

Q. Well, now, just proceed with a general explanation of how you went about the method of the calculation of the volume of gas reserves after you had certain information relative to thicknesses of sand and porosities of sand and pressures in the sand.

A. The volumetric determination of gas reserves was made by me by applying Boyle's law, which I might state here Boyle's law states that for any definite weight of gas the volume increases proportionately as the absolute pressure decreases, and the volume decreases proportionately as the absolute pressure increases, the temperature remaining [fol. 431] constant. Now, in a volumetric determination of gas reserves there must be of necessity an application of Boyle's law. If natural gas pressure, according to Boyle's law, if it were found in containers that could be measured as accurately as this room can be measured, the calculation of gas reserves would be, relatively, just as simple a problem. However, natural gas is more compressible than is air, and the quantities which would exist according to Boyle's law. Therefore, it is considered necessary to make corrections—we term it so—that the Boyle's law may be applied. In other words, we determine the volume of gas in a reservoir by making a correction that would permit us to use Boyle's law, and take into consideration the fact that the gas is more compressible than is air, or than is a perfect gas. Air is not

entirely a perfect gas, but it is more nearly a perfect gas. Now, there are other things, too, that must be taken into consideration. For instance, the reservoir which contains the gas is located from a few hundred feet to four thousand feet below the surface of the ground, and, as I stated a while ago, you must know the pressure that exists on that reservoir before you can determine the quantity of gas that is there. Now, then, we are able to take the pressure at the surface, but we must interpret that in terms of the pressure at the reservoir, which necessitates taking into consideration [fol. 432] the weight of the column of gas from the top to the bottom of the well. In other words, as an illustration,—a column of gas which has a specific gravity of decimal seventy, which means that it is seven-tenths as heavy as air, for a column of gas 4,000 feet high at 1,000 pounds absolute pressure the weight in pounds per square inch at the bottom would be equal to approximately 100 pounds. Therefore, if in gauging the pressure on a well at the surface, and it was desired to have the reservoir pressure at that point, the well being 4,000 feet deep and the specific gravity or the weight of the gas with respect to the weight of the air was decimal 70, then, it would be necessary to add approximately 100 pounds to the pressure which was shown at the top of the well, in order to get the true or actual reservoir pressure. On the other hand, if your pressure at the top of the well, and under the same conditions and the same depth, and the same specific gravity of gas were shown to be only 100 pounds, the weight of the column of gas would be one-tenth, or approximately ten pounds, which would need to be added to the surface pressure in order to get the true reservoir pressure. That illustration I have given in order to show that under different conditions of pressure that the weight of the gas in the well-bore varies materially; and therefore, where the—in this illustration, where it would be necessary to add approximately 100 pounds under one condition, to another [fol. 433] other well 4000 feet deep it may only be necessary to add ten pounds in order to get the true reservoir pressure. Now, there are two applications generally used—applications of Boyle's law—in the determination of volumetric determination of gas reserves. These methods are commonly referred to as the "Porosity Area Method" and the "Pressure Volume Decline Method." In the case of the Porosity Area Method the determination is made, based on the actual voidage space in the reservoir, or the cubic feet of space

there available to contain the gas; and the basic data in the application of this method requires that we know the area extent of the reservoir, the thickness of the reservoir, and the porosity of the sand, or the per cent of that reservoir space which is available to hold the gas. It is also necessary to know the pressure of the reservoir, and then the determination of the gas ~~in place~~ under those conditions may be ~~determined~~. Now, in the application of the Pressure Volume Decline Method it is necessary to know the amount of gas which has been withdrawn and which has caused a certain drop in reservoir pressure; in other words, as you take gas out of any reservoir or any container the pressure drops. Now, then, the actual pressure drop recorded when applied to the volume of gas which has been removed enables you to calculate the amount of gas which remains in the reservoir [fol. 434] after the withdrawal. I believe that, in general, explains the application of the Pressure Volume Decline Method. Now, then, you may readily see that under certain conditions, for instance, where we have had no withdrawal of gas, it is not possible to apply the Pressure Volume Decline Method; and in that case the Porosity Area Method may be best used. I would say that the basic data available determines the application to be best applied in the volumetric determination of gas reserves.

[fol. 435] Q. Mr. Dunn, are both methods—that is, the porosity area method of determining the volume of gas reserves and the pressure decline method—generally recognized and accredited by the oil and gas industry as being correct?

A. Yes, sir; they are.

Q. Are they recognized and accredited by the United States States Bureau of Mines and the United States Bureau of Standards as being proper methods to use in a determination of the volume of gas reserves?

A. Yes, sir; they are.

Q. Now, then, Mr. Dunn, if we refer to page 26 of Exhibit 30 do we find a summary of the natural gas reserves as of January 1, 1933, by the several fields?

A. Yes, sir; we do.

Q. Showing a grand total of three hundred and eighty-six billion six hundred and ninety-six million nine hundred and thirty-two thousand?

A. Yes, sir; we find that.

Q. Actually, should not the letter "M" appear at the end of the figure 386,696,932?

A. It should appear there. However, Mr. Griffith, it is in the heading over the figures shown on that page, M cubic feet of gas.

Q. Now, Mr. Dunn, in order to explain to the jury just what you did in the calculation of the gas reserves of the several fields, what field do you first desire to take up?

A. Well, that would be immaterial, Mr. Griffith. The [fol. 436] Panhandle district appears first in the report. I might explain that.

Q. Very well.

A. On page 44 is shown a calculation of the reserves in the Shamrock field, which is a portion of the Panhandle field, and Wheeler county, Texas. In this determination the pressure volume decline method was used. It was necessary to have the withdrawal of gas, which has caused a decline in pressure, which was shown to be in this case a drop in reservoir pressure from 430 pounds gauge initially to 387.6 pounds gauge as of March 1, 1933, which represents a weighted average pressure for the reservoir. Now, the volume of gas which has been withdrawn, or had been withdrawn in the intervening time between the beginning of the field and March 1, 1933, was found to be two hundred and fourteen billion one hundred and seventy-six million five hundred and sixty-six thousand cubic feet. From this basic data it was then determined that the amount of gas in place in this reservoir as of March 1, 1933, was one trillion seven hundred and fourteen billion six hundred and eighty-nine million nine hundred and twenty thousand cubic feet. Now, it will be noticed that this reserve was determined as of March 1, 1933. I might explain that that date was used because our basic data for the whole field, which includes the wells of others as well as the wells of the Lone Star Gas Company, was available as of that date, whereas as of January [fol. 437] ary first it was not entirely complete, and so I determined the reserve as of March first, and added to that figure the amount of gas which was withdrawn between the date of January first and March first. That is merely adding to the reserve as of a later date the actual withdrawal of gas to get it back to January first. Now, then, the reserve so determined represents the total amount of gas in the reservoir between the existing pressure and the estimated aban-

donment pressure. I have estimated that the abandonment pressure of the Shamrock field would be twenty-five pounds.

Q. What do you mean by "abandonment pressure"?

A. By "abandonment pressure" we mean just this: We know that in any reservoir it is not possible to withdraw all of the gas which is there, and that gas which is not withdrawn or remains there after the abandonment of the field is gas which can not be recovered, and consequently should not be given any consideration in the volumetric determination of the reserve. Then the volume of gas, as I say, that existed in the reservoir between the pressure of the reservoir as of this date and the abandonment pressure represents the volume of gas which will be withdrawn or which will be produced from the field. Then the number of acres in the field in the proven area having been determined to be 124,467 acres was divided into this total volume of gas in order to get the quantity of gas per acre in place as of this date. This was necessary in order to determine that portion of the reserve which was owned by the Lone Star Gas Company, since the Lone Star Gas Company does not own all of the reserves of this field. The Lone Star Gas Company as of this date owned 16,094 acres. Therefore, 16,094.2 acres when multiplied by the volume of gas in place per acre gives the volume of reserves owned by the Lone Star Gas Company as of that date.

Q. And which amount you determined to be what?

A. Two hundred and twenty-two billion four hundred and eighty-five million three hundred and three thousand cubic feet.

Q. And that amount is set forth in the summary sheet on page 40 of your Exhibit 30?

A. Yes, sir; it is.

Q. Now, on page 45, do you show the total withdrawals of gas from the Shamrock field?

A. On page 45 I show the total withdrawals of gas by the companies which have made that withdrawal, which when totaled will give the quantity of gas used in the determination on page 44, and the total of two hundred and fourteen billion one hundred and seventy-six million plus, which appears on 44, is that which is shown on 45.

Q. Mr. Dunn, at page 46 of Exhibit 30 appears a determination of the reserves in the Petrolia field in Clay County, Texas?

A. Yes, sir.

Q. Shown to be one billion nine hundred and seventy-five million eight hundred and fifty-one thousand?

A. That is correct.

[fol. 439] Q. Please tell the jury how you arrived at that calculation of the volume of gas reserves in the Petrolia field.

A. The determination of the volume of reserves in the Petrolia field is in effect an application of the pressure volume decline method. However, it is somewhat individual because of the nature and amount of data available to make that determination. I might explain that the wells in the Petrolia field producing gas continuously do not offer the possibility of making shut-in pressures or reservoir pressure determinations, and the delivery of gas over a period of time under the same operating conditions shows a decline, which decline in delivery rate furnishes the basis for a pressure volume decline determination of reserves. Now, on page 7, of Exhibit 30, is shown a curve which I have prepared, on which the daily delivery rates from the Petrolia field have been plotted, and these daily delivery rates furnish a basis for the determination of the actual decline which has taken place in the delivery rate from January 1, 1929, to December 31, 1932.

[fol. 440] Mr. Griffith:

Q. Mr. Dunn, when we recessed a few moments ago, you just started to explain the graph on page 7 of Exhibit 30.

A. Yes, the graph on page 7, as I explained, is plotted from the daily delivery rates from Petrolia field wells, which I have classified as the Petrolia field proper. It was necessary to make that sort of a classification because in the Petrolia field there are wells which are producing gas continuously and then there are wells on the Miller Farm, we call it, which have been used for storing gas back in the reservoir, more as an experiment, and the storage operations, I believe, were started in 1929.

The wells on the Miller farm were used for this purpose and were producing some gas at the time they were adapted for storage; they therefore had a gas reserve as at the date they were first used for gas storage, and they still have that

gas reserve, even though they are not producing gas other than returning the storage gas continuously. Therefore, in the handling of the Petrolia field problem, it was necessary for me to make that separation, and the graph on page 7 shows the delivery decline rate for the wells located in the Petrolia field proper, and then on page 53 of Exhibit 30 is shown the calculation of the reserve for the Miller farm.

Referring back, however, to page 51 which shows the calculation of the reserves for Petrolia field proper, it may be seen that the daily delivery rate decline curve on page 7 [fol. 441] gives a decline of 8,596 M. cubic feet per month, which is equal to 103.15 M. cubic feet decline in a period of a year in the daily delivery rate. Now then, in a field which has depleted to the extent which the Petrolia field has depleted, which extent is such that the wells now have rock pressures as low as five and six pounds and are still producing gas, it then becomes a matter of judgment as to when their operation will be discontinued. It is my judgment that those wells, being located as they are with respect to each other, may be operating until the daily delivery rate has declined to 100,000 cubic feet of gas per day. On the basis then, of the rate of decline as determined from the graph on page 7, we would then have a period of operation of a little more than eight years after January 1, 1933, or 3,000 days. Then for this period of time I have taken the average in the daily delivery rate as of January 1, 1933, and the estimated future delivery rate when the field will be abandoned and multiplied the average by the number of days and get the total reserve which will be produced in the future, and find in this manner that the reserves are 1,446,930,000 cubic feet.

On page 53, in the determination of the reserves on the Miller farm, I have shown the average daily delivery rate for six months prior to July 6, 1929, which data was available, to be an amount of 360.70 M. cubic feet, and an average daily delivery rate for two weeks prior to July 6th as 343.1 M. cubic feet, and an average daily delivery rate for Petrolia field proper of six months prior to July 6th of 1,310.9 [fol. 442] M. cubic feet, and by applying the same rate of decline to the delivery rate on the Miller Farm as was determined for the Petrolia field proper, in the absence of data strictly applicable to the Miller Farm, we find by an estimation that we will resume normal operations on the Miller farm on January 1, 1935, which is allowing for additional experimentation in the storage of gas in the reservoir, it was

determined that the Miller farm would have a future operation period of a little more than six years, and would therefore have a reserve equal to 528,921,000 cubic feet. This reserve and the reserve determined as shown on page 51 together represent the total reserve for the Petrolia field as shown in the summary, which reserve on page 46 is shown to be 1,975,851,000 cubic feet.

Q. Now, at page 54 of Exhibit 30, do you show a summary of the reserves for the Lee Ray district of Eastland and Stephens Counties, Texas?

A. Yes, I do.

Q. Had you finished all the explanation you care to give in connection with the Petrolia field?

A. Yes.

Q. What general comment do you have to make, Mr. Dunn, upon your volumetric determination of the gas reserves in the Leeray District?

A. I might say, Mr. Griffith, that throughout this entire report in the volumetric determination of gas reserves, that I have considered each individual pool or field separately in [fols. 443-447] order to determine the gas reserves. That is necessary because they are individual reservoirs and they must be handled separately.

[fol. 448] Q. By the way, Mr. Dunn, throughout your determination of gas reserves it is noticed that to arrive at the Lone Star Gas Company's interest you take $87\frac{1}{2}$ per cent of the total of the reserves determined; why is that?

A. I have, in effect, Mr. Griffith, taken $87\frac{1}{2}$ per cent, or any other percentage which might have been determined as that portion which the Lone Star Gas Company owned. Now, in order to explain that, I might make this explanation. The operator who owns a lease actually will receive seven-eighths of the production, and the royalty-owner will receive one-eighth under the standard form of lease.

[fol. 449] Q. By royalty-owner, you mean land-owner?

A. Land-owner, yes, sir. Therefore, the operator or well owner only has an actual interest of seven-eighths of the total production. Therefore, I have throughout this report shown the reserves as owned by the Lone Star Gas Company after the deduction has been made for that portion which will be the land-owner's portion. Now, in some few

cases where there is a partnership in the working interest in the wells, where the Lone Star Gas Company owns less than seven-eighths, the actual percentage that is owned by the Lone Star Gas Company is used as the final figure shown in this report.

Q. And, of course, there are cases where the Lone Star Gas Company owns one hundred per cent?

A. There are, yes, sir.

Q. And in that case you have taken one hundred per cent of your total included amount of the volume of gas reserves?

A. Yes, sir.

* * * * *

[fol. 450] A. I believe that I have, yes, sir.

Q. Refer, please, to page 142. What do you disclose at page 142 of Exhibit 30?

A. On page 142 is shown a schedule that represents the additional wells which, in my opinion, will be necessary [fol. 451] to be drilled in order to produce the reserves set out in this report. In other words, while the reserves have been calculated for those areas which are actually producing gas, those areas are not all completely developed. In other words, it will be necessary to drill some additional wells, and I have set out on this page the additional wells which I believe will take care of the complete development of those areas which are not yet completely developed. That takes into consideration as best it can be taken into consideration in advance the offset obligations, as well as the wells necessary to recover the gas from the reservoir; and I have shown on page 142 that, in my opinion, 135 additional wells will accomplish that purpose.

Q. Refer, please, to page 144 of Exhibit 30. It will appear that on that page you set forth a summary of the Marketable Gas Reserves (Net), as of January 1, 1933, belonging to the Lone Star Gas Company; whereas at page 26 of Exhibit 30, you set forth the total of natural gas reserves belonging to the Lone Star Gas Company as of January 1, 1933. What is the difference between the net figure set forth on page 144 by fields and districts and the gross figures set forth on page 26?

[fol. 452] A. As previously stated the reserves as calculated throughout the Report and shown in summary form on page 26 were found as the reserves which exist between the

present reservoir pressure and the pressure which is estimated at which the reservoir or field will be abandoned. But we know that it is not possible to recover all this gas, even between those pressures, that there will be some additional loss which will not be recovered, and therefore has no marketable value, and the difference between the total reserves as shown in this report and the marketable reserves is the result of a five per cent allowance for gas which will not be marketed, and which gas, in my opinion, will be wasted in the operation of these fields throughout their lives. The total reserves were found to be 386,696,932,000 cubic feet, while the marketable reserves were set out, by making a five per cent reduction for this allowance, at 367,362,084,000 cubic feet.

Q. And in your judgment, Mr. Dunn, does that represent the reasonable determination, and upon a rational basis, of the volume of marketable gas reserves of the Lone Star Gas Company, as of January 1, 1933?

A. In my judgment, that is a reasonable allowance for that purposes.

Q. Would there be any substantial difference between the marketable gas reserves of the Lone Star Gas Company as of January 1, 1933 and now—that is, I mean by “now,” [fol. 453] the date of this hearing?

A. There would not be any substantial difference. If you mean there, Mr. Griffith, taking into consideration acquisitions which have been made—deduction of actual production in between—why, I believe that the acquisitions probably would offset the production. That determination, however, has not been made, but I believe there would be no substantial difference at this time.

Q. Refer to page 145 of Exhibit 30; what do you set forth on that page?

A. On that page is set forth the ownership and distribution of present development. By that, I mean the number of wells which exists as of the date of this report in the separate fields for which the reserves have been determined, and which I refer to as the distribution; and the ownership set out shows the interest of the Lone Star Gas Company in these wells; or, in other words, their interest in the working interest of these wells, irrespective of royalty-owner, as the royalty-owner owns no interest in the well, but merely retains an interest in the reserve. Now, on this page I have shown that the total number of wells, as of January 1, 1933,

was 272; but the Lone Star Gas Company owned the equivalent of 267.4 wells, when effect is given to those wells in which others have an interest in the wells themselves.

[fol. 454] Q. Mr. Dunn, commencing at page 147 of the Report, are you responsible for the preparation of all data set forth up to the close of the Report?

A. With the exception, Mr. Griffith, of the well data that Mr. Kendrick referred to with reference to the wells in the Leeray fields and the Sipe Springs field, and so forth.

Q. Of course, Mr. Kendrick furnished anything of a geological nature that appears in that tabulated information?

A. Yes, sir; and there are, I believe, two tables which show details of information furnished by Mr. Kendrick; the remainder in the balance of the Report I am responsible for the preparation of.

Q. Refer, please, to page 149 of the Report.

A. Yes, sir.

Q. That is Exhibit 30. What have you set forth on that page and on succeeding pages?

A. On page 149 is the beginning of Table No. 1, which we have designated in the Index or Table of Contents on page 147, as the Master Lease Table. Now, this table extending from page 149 through 189, inclusive, sets out the detail of all of the leases owned by the Lone Star Gas Company, as of January 1, 1933, in which is shown, first, the total number of acres in the lease; second, the Lone Star interest; and in the case of the seven-eighths interest, or the regular lease in which the royalty-owner or land-owner has a one-eighth interest, the Lone Star Gas Company's interest is shown as [fol. 455] .875; and then a determination is made and shown as the Lone Star Acre Interest in this lease, which information is used in the application of the Lone Star Gas Company's interest in the reserve. For example, if we take the first lease, which is shown as Lease No. 246 in Clay County, having 10 acres, the Lone Star interest .875, the Lone Star Acre Interest 8.8—and I might say that the nearest tenth of an acre is considered accurate for this purpose; therefore, the acre interest for which reserve has been calculated is 8.8. In other words, this table shows that all of this reserve is proven for gas, but a reserve has been calculated; and then under the last heading in this table is shown acre-interest for which no reserve has been calculated. Now, all of the leases as of the date of this report are shown in the Master Lease Table.

Q. When you speak of leases in this connection you refer, of course to gas leases owned by the Company?

A. Only the gas leases, yes, sir.

Q. And the lease numbers which appear in the first column are the lease numbers as carried on the records of the Company?

A. That is correct.

Q. In other words, every lease that the company owns is identified by an accounting number?

A. That is correct.

[fol. 456] Q. Refer, please, to pages 199 to 204, inclusive of Exhibit 30.

A. On page 199 is set forth Table 4, showing sand thicknesses and rock pressures by pools for wells in the Lake Sand proven acreage in the Leeray district. On pages 199 to 204, inclusive, are shown the details with respect to the rock pressure or gauge pressure of the wells as of the dates shown. I am responsible for the information with respect to these pressures.

Q. At pages 209 to 220, inclusive, of the exhibit do you set forth a classification of the leases owned by the company in the Leeray district, both proven and unproven or developed and undeveloped?

A. Yes, sir. On page 209 is shown the acreage in the Brooks pool, which is classified by leases which fall in the proven or semi-proven area as determined by Mr. Kendrick for the Lake Sand and the sands below the Lake, and likewise the acreage is classified with respect to these areas furnished by Mr. Kendrick and in connection with the determination of the reserves in each separate pool.

Q. At page 227 of the report do you set forth the rock pressure for the Sipe Springs field?

A. Yes, sir; I do. The explanation is the same as the explanation for the rock pressures of the Leeray district.

Q. At pages 230 and 231 do you set forth the Sipe Springs leases owned by the company, the Lone Star acreage interest, and the classification, whether proven or semi-proven?

A. Yes, sir; I do.

[fol. 457] Q. And what do you mean by "proven" and what do you mean by the term "semi-proven"?

A. Those terms mean that according to the geological information furnished me by Mr. Kendrick, he has made that classification of the acreage as between proven and semi-proven, and the application of this information as applied in

this report by me was done in this manner: The proven area reserves were determined at one hundred per cent and for the semi-proven areas in areas immediately adjacent in which there is some possibility of fluctuation, as I understand it, in the actual size of the reservoir, we applied only a fifty per cent factor; in other words, if Mr. Kendrick told me that this area is semi-proven adjacent to proven area, I assumed then that fifty per cent of the acreage would produce gas the same as the one hundred per cent of the proven area, and that classification is here made.

Q. At pages 232 and 233 do you show the leases of the Lone Star Gas Company in the Cheaney field district, together with the Lone Star acre interest?

A. Yes, sir; I do.

Q. And what appears at page 234 of Exhibit 30?

A. On page 234 of Exhibit 30 there is set out the leases of the Lone Star Gas Company upon which are located the miscellaneous wells in Texas for which the reserves have been calculated, and on this page I have also designated the well in addition to the lease number, the county in which it is located, and the total number of acres and acre interest of the [fol. 458] Lone Star Gas Company.

Q. What appears at pages 235 and 236 of Exhibit 30?

A. At pages 235 and 236 is set out the lease table for the Chickasha field, in which is shown the lease number and the location of the lease, either in the north field or in the south field, total number of acres and Lone Star acre interest—that is, the total number of acres and the acre interest and the number of acres for which the reserve has been calculated.

Q. What appears at pages 237, 238 and 239 of Exhibit 30?

A. On pages 237, 238 and 239 are set out in order leases which existed as of January 1, 1933, in the Duncan field and in the Loco field, and on page 239 the leases showing where miscellaneous wells in Oklahoma are located.

Q. Now, Mr. Dunn, does the Lone Star Gas Company own any leases which are undrilled or undeveloped as far as having a well actually located thereon and producing is concerned but which are adjoining well defined and well developed gas-producing structures?

A. Yes, sir; they do.

Q. Have you included in your determination of the volume of gas reserves any of the territory which is embraced in leases which have been as yet undrilled by the company?

A. Only to this extent, Mr. Griffith: The reserves were determined for the developed areas. Now, the developed areas as set out in the report may not be completely developed. Therefore, the necessity for the schedule is here for the estimation of additional wells to recover the calculated [fol. 459] reserves. We have not included in this report any calculation of reserves for areas which are not partially developed or actually proven, and as an example of that I would refer you to the leases which are owned by the Lone Star Gas Company in Carson County, and in Gray County, in the Panhandle; and I might state that the leases in these counties are actually proven by the production of others, but the Lone Star Gas Company has no pipe line outlet from these counties at the present time and has drilled no wells on the leases owned by the company in those countries, and consequently I have not calculated the reserves which are owned by the Lone Star Gas Company in those countries, because the leases are undeveloped and have no market outlet at this time, but I would say that they are proven.

Q. Right there, you have included nothing in your estimate of the volume of gas reserves for leases in Gray and Carson counties which you have testified about?

A. No, sir; I have not, and I have not included any calculation or estimation of reserves for any leases located outside of the areas which are actually producing or designated as proven for production by Mr. Kendrick having been partially completed or developed at this date.

Q. Did you determine, either for yourself or Mr. E. A. Steinberger, the proportion of the undeveloped leaseholds which are found in the proven or developed areas for which you made a calculation of gas reserves?

[fol. 460] A. Yes, sir; I did.

Q. In what manner did you make that determination?

A. In the Master Lease Table, starting on page 149 and going through, I believe, 189, is set out that proportion of each individual lease for which the reserve has been calculated and/or that portion for which no reserve has been calculated. Now, we find in this table some of the leases for portions of which calculations have been made and portions which are outside of the proven areas referred to and for which no reserve has been calculated; we have leases which are wholly without and away from the proven areas. On page 189 is shown the total number of acres under lease by the Lone Star Gas Company as of January 1, 1933, which

was 184,331.8 acres. Now, the acre interest of the Lone Star Gas Company was 154,327.1 acres, which represents the deduction for the interest of others, including the interest of the royalty owner in the reserve. Then of the total one hundred and fifty-four thousand plus acres, 104,808.7 acres are shown as the total number of acres, expressed in acre interest, of the Lone Star Gas Company for which no reserve has been calculated; in other words, roughly speaking, the reserves as set out in this report have been calculated and are represented as approximately one-third of the total acreage held by the company as of that date—total gas acres. Then this information which classified the leases was furnished to Mr. Steinberger.

[fol. 461] Q. With what instrumentality did you determine the acre interest for which no reserve had been calculated?

A. The areas for the separate leases or the total proven areas were determined by me by the use of a planimeter.

Q. How do you spell that?

A. P-l-a-n-i-m-e-t-e-r. Now, then, a planimeter is an instrument generally used, I would say more often for the determination of the area of the indicator card from a steam engine or a gas engine. It is recognized as an accurate instrument for the determination of areas represented on maps of any area according to a certain scale. Now, the planimeter was used in the determination of these areas, first to determine one portion and the other portion and check back against the known area of the leases. I believe that explains the method that was used by me in the determination of these areas.

Q. And you furnished to Mr. E. S. Steinberger a calculation by the planimeter for the undeveloped leasehold acreage?

A. For the portions of them that were divided with respect to the proven areas.

[fol. 462] Q. Mr. Dunn, as you previously testified, you made no calculation of the volume of gas reserves on the undrilled leases of the Company in Gray and Carson Counties?

A. Yes, sir.

Q. In your opinion and from your knowledge of the territory wherein those leases are located, do you believe that

those leases have a volume of gas reserves underlying them, substantially equivalent to the gas reserves included in the leases of the Company in the Shamrock District of Wheeler County, Texas?

A. I believe that they have, Mr. Griffith. If you put that on the basis of a drilled acre comparison, I think—although I actually made no calculation of reserves in either of those counties, I know from my own knowledge that the development to date has been such; and it is general information that the entire Panhandle Field, of which the Gray and Carson leases are a part, is what might be expressed as prolific gas producing territory.

Q. Mr. Dunn, as Production Engineer, are you primarily responsible for the proration of production in the field and proration of purchases in the field, and, in the last analysis, for the amount of gas taken from the several fields which supply the Lone Star Gas Company's pipe line system?

A. Yes, sir, that is part of my duties. I am responsible [fol. 463] for the amount of gas which is produced, when applied to the requirements. In other words, I have no control over the demand, but I am responsible for the production of the gas to meet that demand, as obtained from the separate fields and the separate wells, and so forth, which includes the proration of that gas in the individual fields and from the separate sources of supply.

Q. Your Exhibit 30 determines that the net marketable gas reserves of the Lone Star Gas Company are, in round figures, three hundred and sixty-seven billion cubic feet?

A. Yes, sir.

Q. Over what period of time, Mr. Dunn, do you believe it is reasonable to assume that those gas reserves will have been produced and the gas leases depleted?

A. I believe that those reserves will have been produced in a period of time of approximately twenty years.

Q. Will you please tell the jury why you believe that to be true?

A. Well, I believe that to be true based on my knowledge of the conditions under which the gas is now being produced, and my analysis of the conditions, as best they can be analyzed, under which the gas will be produced in the future. Now, as an example of the factors that I would attempt to take into consideration in respect to the estimation of the twenty-year period for the total withdrawal of this [fol. 464] gas, I would specifically call your attention to the

531

fact that the Lone Star Gas Company now receives a good portion of its supply of gas from casinghead gasoline plants. The casinghead plants, as we know them, are engaged in the manufacture of natural gasoline which is extracted from casinghead gas of gas from oil wells produced with oil. The casinghead plant gathers this gas from the—either from the separators or from the tank in which the oil is produced, collects it, and extracts the gasoline, and then has a residue gas available for sale, and the Lone Star Gas Company has for a number of years received a great portion of its supply from the residue available from a large number of casinghead plants located in the West-Central Texas area. Now, up until a certain period of time in the life of those fields out there there was additional casinghead gas in sizable amounts that were connected up to gasoline plants, but I might say that, generally speaking, the oil fields in that area—and there are no other areas which are adjacent to the Lone Star Gas Company's system that have this type of gas available—the oil fields there are considered to be about exhausted or completely developed, and the amount of casinghead gas is declining. We know that some day in the not far distant future that this total amount of gas must be replaced, we must be ready to replace this part of our demand with production [fol. 465] from wells. The natural thing is, then, that the production will be increased from the wells, to replace this amount of gas. Then there is another factor that I believe I have given consideration to, and that is the fact that in the past we have been supplied with gas in very large proportion of our demand from independent operators, who, in the search for oil, got wells that produced gas instead of oil, and being adjacent or near to our pipe line system they sold gas to the Lone Star Gas Company on gas purchase contracts. I know of my own knowledge that there is comparatively very little of a prospect for this gas to be made available to the Lone Star Gas Company in the future, by reason of the fact that most of the oil areas adjacent to and near the pipe lines of the Lone Star Gas Company have been developed, and a good many of them exhausted completely, and there is not the same possibility for the independent operator to drill in search for oil and get a gas well, which has been made available to the Lone Star Gas Company in the past; in other words, they have just about used up that method of furnishing gas to the Lone Star Gas Company. I make that point to show that in the future it must necessarily be the result

that the Lone Star Gas Company will have to drill and develop a much greater proportion of its demand than it is at the present time furnishing, or has for some time in the past.

Q. In years past the Lone Star Gas Company has purchased [fol. 466] independent producers a very sizable volume of gas in the field?

A. Yes, sir, they have.

Q. And there are certain fields wherein the Lone Star Gas Company secures gas where it has no great amount of gas reserves which it owns?

A. Well, there are certain fields where the Lone Star Gas Company receives gas and owns none of the reserves.

Q. Take the Fox Field in Oklahoma, for example—is that a large gas field?

A. Yes, sir, that is a large gas field, and one that is at the present time very necessary to supply a sizable portion of the total requirements of the system of the Lone Star Gas Company when those requirements are approaching peak demand or amount to considerable gas. In other words, when we have heating weather over our system the Fox Field gas which is available must be counted on and depended upon for a large percentage of our requirements. [fol. 467] Q. And is the same thing true in respect of gas purchased by the Company in the Chickasha district?

A. Well, the Lone Star Gas Company both purchases and produces gas in the Chickasha district, and naturally the amount of gas available is needed there, but the availability is not as sizable as it is in the Fox field.

Q. Is the Fox field one of the major gas fields of the Mid-Continent area?

A. It is, I would say, and has been for a number of years.

Q. Have you ever made any calculation or estimate of the volume of gas reserves in the Fox field?

A. No, sir, I have not.

Q. Would you care to hazard a guess as to what you think it is, based upon your best judgment and the information which you have?

A. Mr. Griffith, I don't know—I don't believe I would like to hazard a guess, because there are so many factors to take into consideration, but I will say that the Lone Star Gas Company purchases quite a sizable amount of gas from this field; and you asked me about the information I have at hand, and I do know that as an example, one well there has pro-

duced more than four billion cubic feet itself and it still has a rock pressure of 700 to 1,000 pounds, or in that neighborhood, and that example shows that the field as a whole has quite a large amount of gas to be produced. Now, there are two sands in that field that have been developed [fol. 468] to date; we call them the low pressure sands or low pressure wells and the high pressure wells. There are certain low pressure wells that have produced gas down to a rock pressure probably of 200 to 250 pounds. Now, I know of my general information that the prospects are considered good for deeper production than the deep sand now, but I would not care to attempt to show that there actually is that possibility because I don't have the geological information necessary.

Q. That is all.

Cross examination.

Questions by Mr. Fitzhugh:

Q. How much gas did your company produce last year, Mr. Dunn?

A. From its own wells you mean, Mr. Fitzhugh?

Q. Yes.

A. I do not have a summary of that gas production; because it was not necessary in the compilation of this report. However, those figures are available.

Q. Do you have the approximate figure?

A. Well, if you would care to have me hazard a guess, I would say that the Lone Star Gas Company wells, in the year 1933, produced from seven to nine billion cubic feet. That is as close as I would care to approximate it.

Q. And how much, approximately, did your company buy from casing-head plants?

A. In excess of ten billion cubic feet, I believe.

Q. And how much, approximately, did you buy from other owners?

[fol. 469] A. We bought the balance of our requirements from other owners, I would say approximately eleven billion cubic feet.

Q. So that from all sources you got for that year about 29 billion cubic feet?

A. That would be my approximation of it, Mr. Fitzhugh.

Q. What are the total estimated reserves as shown in your exhibit?

A. Shown in my exhibit, the total estimated reserves—you want the marketable reserves, I suppose?

Q. Yes.

A. The marketable reserves as shown in the exhibit are 367 billion, plus.

The Court: That is cubic feet of gas, I take it?

A. Yes, that is cubic feet of gas.

Q. And your company is getting new reserves, isn't it, Mr. Dunn, just about as fast as the old reserves are used up? That is, they have been doing that all long?

A. Well, it is the policy of the company to acquire additional gas reserves and I assume it will be their policy to continue to do that; it seems to me it is necessary to do that.

Q. Now, using the figures that you gave for last year's production, divided into your total reserves, Mr. Dunn, it would show that instead of their being about twenty years gas reserves it would be in the neighborhood of forty; isn't that true?

A. If you were going to assume that the production for each and every one of those forty years in the future would be the same as last year, but I would not make that assumption.

[fol. 470] Q. Exactly. In order for you to assume a twenty year life, you have to assume there will be an increased amount of gas consumed in the future?

A. Yes, that is what I have assumed.

Q. And further, that you will acquire no additional reserves?

A. Well, no—we will acquire additional reserves.

Q. But for the purpose of your assumption, you have to assume that you will not require any more in the future?

A. It seems to me there, Mr. Fitzhugh, that you assume that our sales would remain the same and all those things would remain constant, and I have not made that assumption.

Q. No, we are trying to find out, Mr. Dunn, if you had the same production in the future years as you have right now, how long your present reserves would last, without acquiring any additional reserves.

A. I will say in that connection if we had the same production from the company wells in each of the years for the forty consecutive years as we had in 1933, it would take about forty years to produce it, but I will say that has not

been our experience in the past and we do not expect it to be our experience in the future, based on the reasons I gave you a minute ago.

Q. So as to any predictions as to the life of your gas reserves, it is more or less uncertain because at this time you could not predict what the consumption will be, by years?

A. As to the predictions of gas use in the future, Mr. [fol. 471] Fitzhugh, I believe that is reasonable.

Q. What percentage of the Texas gas reserves shown in your exhibit are developed leaseholds?

A. The Texas gas reserves as shown in my exhibit, and as I stated a few minutes ago, are all located in developed, partially developed or proven areas, and the reserves were calculated for the area as a whole. Now then, there may be and there is some leases within this area that have no well on them, but there are no reserves calculated for any leases without proven or developed areas—if I make myself clear.

Q. Have you included in your exhibit, Mr. Dunn, any leases on which there is no production at the present time?

A. Only in so far as those leases on which there is no production are located within proven areas.

Q. Well now, what percentage of the total reserves as shown in your exhibit, Mr. Dunn, are leases of those class just mentioned—that is, leases on which there is no production at the present time, although those leases are in known and proven areas?

A. Well, Mr. Fitzhugh, it would not be possible for me to give you that sort of figure, because the reserves were not figures for separate leases. You could not correctly figure reserves with respect to separate leases but must necessarily figure the reserves for the reservoir as a whole. Now then, the reservoir as a whole includes quite a lot of acreage, and one lease constitutes only a part of that acreage and therefore [fol. 472] fore I have made no determination for the reserves for the separate leases, and I could not answer that.

Q. Could you give me an approximate figure?

A. No, sir, the reserve is figured for the area as a whole, and therefore that proportion belonging to the Lone Star Gas Company was determined according to its interest in the acreage of the pool as a whole.

Q. Would you say, Mr. Dunn, that one-half of the leases the company has, cover areas on which there is no production at this time?

A. No, sir, the reserves that I have calculated and shown in this report represent only approximately one-third of the total number of acres owned by the Lone Star Gas Company.

Q. You did, however, estimate the number of wells?

A. The number of additional wells that would be necessary to completely withdraw this gas from these reserves?

Q. Yes.

A. Yes, I did.

Q. Refer to page 10, please sir; you show, about the middle of the page, a lease No. 1436, which covers 640 acres. Do you locate that?

A. I have not located that yet.

Q. It is just to the left of the Storm pool area.

A. Yes, I have it.

Q. Now, right in the middle of that 640 acres your map shows a dry hole?

A. Yes.

[fol. 473] Q. Now, Mr. Dunn, what classification did you give to that particular lease?

A. The classification that was given to that lease was that the portion there that is colored in red, which is the North-eastern portion, was considered as proven, which information was furnished by Mr. Kendrick; and that portion adjacent to this red portion on the West was considered as semi-proven, which information was also furnished by Mr. Kendrick, and the balance of the lease was shown as acreage for which no reserve was calculated.

Q. And the areas on this lease covered by the red portion and the green portion, I suppose, were calculated by the use of a planimeter, were they?

A. On a larger scale map, yes. I don't know of my own knowledge the data with respect to this dry hole that you referred to. It may be that was carried to a certain depth above—but that geological information is information which Mr. Kendrick has.

Q. Where in the back of your exhibit do you show that lease?

A. In the master lease table, you will find that lease in its regular numerical order of leases, and the table starts on page 149. That lease is shown on page 156, at the bottom of the page.

Q. Referring now to that page 156, Mr. Dunn, the next to the last column to the right, headed "Acre interest for which

reserve has been calculated", shows the number of acres [fol. 474] calculated by you, where a division is necessary to figure off the part of the lease which has shown itself not to be capable of production?

A. Yes.

[fol. 475] Q. And talking about this same lease now, 1436, at the bottom of the page, in the same column just referred to, you show 397 acres for the acre interest for which reserve has been calculated?

A. Yes, sir.

Q. And 163 acres in the portion for which no reserve has been calculated?

A. Yes, sir. I should have qualified my answer a minute ago, Mr. Fitzhugh, to that portion for which reserve has been calculated and referred to on page 10 as that portion of the lease for which reserve was calculated in the Lake Sand.

Q. The 163-acre figure shown in the last column on page 156 does include the acres in the shaded part as shown on page 10 does it not, and on which there is a dry hole?

A. It is a portion of that lease. Now, on page 11 is shown the portion of this same 640 acres for which reserve has been calculated on sands below the Lake sand, and the 163 acres remaining, as shown on page 11, is acreage for which no reserve has been calculated in either sand.

Q. Well, if you refer to both pages 10 and 11, there is still a shaded portion of this same lease that will not be covered as a producing area on either?

A. Yes, sir, as represented by the 163 acres.

Q. Nevertheless, that amount is included in your 163 acres as shown on your page 156?

[fol. 476] A. The 163 acres as shown on page 156 is that portion of this lease which contains 640 acres, for which no reserve has been calculated on either the Lake or the sands below the Lake.

Q. But that calculation does still cover, Mr. Dunn, doesn't it, a portion of the lease that is not shown to be producing or proven on either page 10 or page 11?

A. Yes, sir; that is what it represents, yes, sir.

Q. On Lease 1667 the same sort of condition obtains, does it not?

A. There is a portion of lease 1667 for which no reserve has been calculated.

Q. Lease 2005, Mr. Dunn, does not appear on either page 10 or 11 to be a proven or producing area?

A. I have not located Lease 2005 yet?

Q. It is a little bit to the left of that first one.

A. That is correct.

Q. On page 189 you give the totals for Oklahoma and for Oklahoma and Texas?

A. Yes, sir.

Q. As to the acre interest for which no reserve has been calculated, the totals shown on that page include a number of portions of leases just like these three we have been talking about; isn't that true, Mr. Dunn?

A. Yes, sir; it contains a number of those, yes, sir.

Q. Can you give the portion of these total figures represented by leases similar to the ones we have just been talking about?

[fol. 477] A. No, sir; I can't this time give you the proportion, but it would be obtained by addition of those acreages as shown, where a lease has part in one, and part in the other of the last two columns in this table; you would have to pick them out separately.

Q. Now, you would have included for each lease in the second column from the right any acreage that had been proven, would you not?

A. In the second column from the right—

Q. Yes, sir.

A. All of the acreage for which reserves have been calculated or have been proven.

Q. Have you anywhere in your calculations at all, Mr. Dunn, cut out any leases or portions of leases where it is definitely known that that portion of the lease is dry or non-productive of gas?

A. Well, Mr. Fitzhugh, I might answer that question this way: That I have calculated the reserves for those leases which we know are not dry or which are proven not to be dry; and then I have shown in this table all of the acreage for which no reserve has been calculated. Now, I can't say that any of these leases which are shown in this table for which no reserve has been calculated are known to be dry—I don't know; they are acreage for which I have not made any reserve calculations.

The Court: For the purpose of the exhibits, you are just [fol. 478] considering them dry.

A. I am just considering them unproductive or unproven.
The Court: You are considering them as unproductive or unproven?

A. Yes, sir.

Q. But you do have, do you not, some acres, that appear in the column on the right-hand side of these sheets, which have quite definitely been proved to be dry and unproductive of gas?

A. I would not say that. I would say that they have not been proven as of the date of this report.

Q. Frequently you run into an instance, Mr. Dunn, where you drill a dry hole on one lease, and on the same lease may get a good well?

A. I don't know how frequently that would be.

Q. That occasionally happens, doesn't it?

A. I don't recall any instances of that kind. Understand, my information is more in line with the producing wells, and if they never produce I don't know much about them.

Q. What is the abandonment pressure, or the pressure at which you usually abandon wells in the Texas gas fields?

A. Well, Mr. Fitzhugh, I would say that that would vary according to the conditions under which the separate fields are producing gas. Now, I can imagine instances where the [fol. 479] abandonment pressure of an individual well might be rather high, and I can cite you also instances, such as the Petrolia Field, where wells are operated as low as five or six pounds pressure.

Q. What abandonment pressure did you assume for the various fields in Texas in preparing your report?

A. Would you like for me to go through and enumerate them?

Q. Yes.

[fol. 480] Q. Mr. Dunn, just before the noon recess I had asked you for the pressures at which you had abandoned the wells in the different Texas fields. Do you now have that?

A. I have the pressures at which I assumed the Texas fields would be abandoned. For the Panhandle field, or Shamrock field, in the determination of the reserves as shown in the Report, Exhibit 30, an abandonment pressure was assumed of 25 pounds gauge pressure at the surface. In the Leeray shallow production, I likewise assumed an abandon-

ment pressure of 25 pounds, and in the Leeray deep production I assumed an abandonment pressure of 50 pounds. In the Sipe Springs I assumed an abandonment pressure of 25 pounds; in the Cheaney Field, I assumed an abandonment pressure of 50 pounds. Are the Texas fields the only ones you care to have, Mr. Fitzhugh?

Q. Yes, sir.

[fol. 481] A. That is all.

Q. As a matter of actual practice you very rarely keep a well in operation after the pressure drops to below 25 pounds; isn't that true?

A. Well, Mr. Fitzhugh, we keep the wells in operation just as long as they will continue to produce oil and their operation is justified. It varies under conditions from field to field. This is merely in my judgment a reasonable assumption in connection with these fields.

Q. With the possible exception of the Petrolia Field, there is probably no field in Texas where you ever operate the wells after they reach less than 25 pounds pressure; isn't that true?

A. Well, no; I would not say that is true, Mr. Fitzhugh. I will say that the Petrolia Field is an exception in that it has been operated down to a much lower pressure than any of these assumed abandonment pressures; and in connection with the majority of the other fields for which reserves have been calculated they have not had an opportunity to produce gas down to those points. In other words, we do not have a great number of examples. Now, in the Duncan Field, in Oklahoma, a good many wells have been produced down to pressures lower than the abandonment pressures I have assumed; in the Loco field, that is true; and in the older fields. I will make this statement in connection with the [fol. 482] abandonment of wells: When you have a number of wells adjacent and near each other, they naturally can be operated down to a lower point than if you had individual wells out by themselves; that has something to do with it, as well as the characteristics of the sands, and the conditions under which the gas must necessarily be produced.

Q. Now, what is the rock pressure in the Petrolia Field?

A. Well, sir, in the Petrolia Field, Mr. Fitzhugh, it is not possible for us to take the rock pressures, because of the fact that the wells are produced continuously. We have at times got shut-in pressures, which, in effect, are working

pressures on the sand at that point, due to the fact the gas is flowing out through the reservoir. I would say, though, that the present rock pressure, or rock pressure, as of this date, would be found to be, in my opinion, from 5 pounds, possibly up to 40 pounds—the present rock pressures of those wells.

Q. What would you say is the pressure at the gauge—the gauge pressure in the Petrolia Field?

A. I had reference to the gauge pressure at the top of the well, because that is the way the pressures are taken.

Q. Is there a well in the Petrolia Field, Mr. Dunn, where the gauge pressure is in excess of five or six pounds at the surface?

A. Yes, sir. There are some wells on the Miller Lease which had rock pressures considerably higher than that at [fol. 483] the time the storage operations were started. Now, they have rock pressures higher than that due to the fact that gas has been put in; and, of course, the majority of the other wells, I would say, have very low rock pressures, maybe from five to ten pounds.

Q. If I understand this Miller Lease proposition there is a sort of underground reservoir there on the Miller lease?

A. The reservoir is there from which gas has been produced in the past.

Q. You pump gas into that reservoir and store it there?

A. Yes, sir; we have been conducting that sort of experiment.

Q. And after you have pumped in gas and stored it in the underground reservoir on the Miller Lease, of course those wells have an artificial pressure then?

A. Yes, sir; their pressure is increased in proportion to the amount of gas put into the reservoir.

Q. I don't want to talk about any of those wells. I want to talk simply about those wells in the Petrolia Field proper which are not being used for storage purposes or that are connected with a storage reservoir; I am speaking about now the wells that are running on their own pressure, so to speak?

A. Yes, sir.

Q. And of those wells do you have any wells with a gauge pressure at the surface of over five or six pounds?

A. As I say, I don't know what the pressure actually is; [fol. 484] but I believe the average would probably be not more than 10 pounds, or less than 10 pounds.

Q. As a matter of fact, a lot of the gas that comes from those wells is obtained by suction, isn't it?

A. No; we refer to the pressure against which this gas is produced as a suction line; but as a matter of fact, the reason we call it a suction line is because it is on the suction end of the compressor station. In other words, the compressor station picks that up and compresses it up to a pressure necessary to get it into the main line. There is approximately one pound pressure carried on each of the lines for these wells you refer to, and for the Petrolia field proper, the gas, then, is produced from the well against a pressure of approximately one pound, and the gas flows to the compressor station and is picked up and compressed and discharged at the pressure necessary to get it into the main transmission system.

Q. Why is it that you can't make a shut-in pressure determination?

A. It is possible to make that—entirely possible by closing in your wells for a period of time that is necessary to get a settled rock pressure, but it is the policy of the Company to produce the wells continuously.

Q. Those are the only wells that you do not have shut-in pressures on at this time?

A. No; there are some two or three of the Miscellaneous [fol. 485] Wells that are operated that way; but, generally speaking, they are about all of the wells that we do not have the shut-in pressures on.

Q. What was the Petrolia Field production for the year 1932?

A. I believe that I have that here. (Witness looks for data.)

A. I have here, Mr. Fitzhugh, figures representing the calculated production from the Petrolia Field; and I say "calculated", because the wells in the Petrolia Field do not have individual orifice meters to measure the gas that is produced; and therefore, it is not possible the same as it is in connection with the other wells delivering gas into our system, to get the individual well measurement. Consequently, we have periodic gauges made of the flow of gas from the individual wells—and the flow is constant, or fairly constant—and from these periodic gauges we determine the production by weeks, and then the sum of that determination

is the figure that I have here, which is 420,391,000 cubic feet for the year 1932.

Q. Is that 1932 or 1933?

A. 1932. I thought you asked me for that.

Q. Yes, sir; I did. Do you have the figure for 1933?
[fol. 486] A. I have only here the figure through May, 1933, Mr. Fitzhugh, as used in the curve that I have shown here. Through May those wells delivered 103,026,000 cubic feet—or for five months in 1933.

Q. Those figures do not include the gas that came from the Miller lease?

A. No; they do not.

Q. They include only the production from the wells in the Petrolia Field proper?

A. Yes, sir.

Q. Don't you have a master meter, Mr. Dunn, for the whole field?

A. Yes; the gas is measured from the field as a whole, and I think that master meter measures the gas from the Petrolia Field proper, from the Miller Return, from the Holloway and Taylor leases, from some wells from which gas is purchased—the Ray Dawson, Kelly and heirs, Robertson Wiley wells—in other words, that master meter measurement includes all the gas coming into the station at that point.

Q. Do you have figures on the amount of oil produced in the Petrolia Field?

A. No, sir; I have not.

Q. Who has that?

A. I have that in my office. I keep those records, but I don't have them with me.

[fol. 487] Q. Could you find out from those records, Mr. Dunn, the amount of oil produced in 1932 and 1933?

A. Absolutely, yes, sir.

Q. Will you give us that?

A. I will be glad to. I can tell you, however, now, from which leases it is produced and so forth.

Q. Would it be possible to get the gas production in 1933. You just gave it through May?

A. Yes.

Q. Would it be possible to get the completed figure for the year?

A. By this same method, yes, sir.

Q. Now, give, Mr. Dunn, the gas production for 1933 from the other fields in Texas.

A. I don't have that information with me, Mr. Fitzhugh. I believe you asked me that this morning. I don't have it. I had only the information used in the calculations of these reserves, of which production in the Petrolia Field was a part.

Q. Do you have those figures for the year 1932? I suppose you don't have those either?

A. No, sir; I don't.

Mr. Griffith: That is, you do not have them with you?

A. No, sir; not with me. The figures are available.

Q. Will you get those figures also?

[fol. 488] A. I will be glad to. Mr. Fitzhugh, you want only the production from the Lone Star Gas Company's wells?

Q. Yes, sir; from all Texas fields in 1933 and 1932; and I guess we had better get them for the Oklahoma wells, too.

A. And Oklahoma; all right.

Q. Yes. I believe your testimony was that the Petrolia Field would be abandoned when the production drops down to approximately—

A. One hundred thousand cubic feet of gas per day is my estimate.

Q. What is the basis of that?

A. The basis for that, Mr. Fitzhugh, is based on my judgment of the point at which it would not be profitable to continue the operation. I believe that they will be continued down to that point.

Q. Have you calculated the cost of producing gas from the Petrolia Field?

A. No, sir; I have not.

Q. How would you go about finding out when those operations become unprofitable?

A. Well, in a general way, it would probably be determined in a manner similar to this: If the operation of those wells, located as they are adjacent to a permanent compressor station, such as the Petrolia compressor station, [fol. 489] whereby certain employees must remain there for the purpose of continuing other operations of the Company, and if those employees can look after these wells—or, in

other words, if the Company can continue to operate these without additional costs, or extra costs over and above other costs, why then it pays to operate them. I will say that the Petrolia Field is somewhat of an exception. There are other places, however, which might be comparable when we get down to that point.

[fol. 490] Q. Well, you have never figured out, have you, Mr. Dunn, what it costs to produce gas there?

A. No, sir; I have not.

Q. So you could not tell exactly whether the company was making or losing money on those operations on which you made a calculation, could you?

A. Well, I don't know, Mr. Fitzhugh. The policy of the company would be somewhat involved there, whether or not in the judgment of the company we should continue the operation of those wells in order to get the gas that remains there and might be produced. It is my opinion, based on our policy in general and based on the conditions surrounding this Petrolia field situation, that those wells could be produced until production has dropped to approximately one hundred thousand cubic feet per day. That must necessarily have to be an estimation.

Q. At the point where you say the field would be abandoned—that is, if you are only making one hundred thousand cubic feet per day, at six cents how much would that gas be worth?

A. Six dollars a day.

Q. That is practically no production at all when it gets to that point?

A. Well, I will say it is very small.

Q. Yes, sir. How many producing wells are there in the Petrolia field?

A. You mean again the Petrolia field proper?

Q. Yes.

A. Mr. Fitzhugh, would it be sufficient for your purpose [fol. 491] if I say that there are approximately thirty? It would not miss it more than one or two wells either way.

Q. All right.

A. I don't put my hand on it here.

Q. Now, how many of those wells, or approximately how many of those wells were cleaned out—first, how many of those wells are oil wells?

A. Not any of those are oil wells.

Q. There are some wells in the Petrolia field that do produce both oil and gas; is that correct?

A. No. There are some wells in the Petrolia field that produce oil, but not any gas. Now, I would like to qualify that statement to this extent: On the Holloway lease, which is an oil lease, we have carried on some repressuring operations similar to the storage operation on the Miller farm. We have put gas down there for the purpose of recovering more oil. Now, that gas is returned from the Holloway lease, but it has been given no consideration by me in the determination of the reserve. Then we have oil production on the Stein lease, but no gas production. We have oil production on the Taylor lease, which is adjacent to the Holloway lease, and such gas as is returned from the Taylor well is also returned from repressuring operation. Now, then, with the exception of those three leases, there are no leases owned by the Lone Star Gas Company in the Petrolia field that produce oil, and no gas production whatsoever. Likewise these thirty wells to which I have referred for [fol. 492] which the gas reserve has been calculated produce no oil and never have produced any oil.

Q. How many of the wells which do produce oil were cleaned out in 1933?

A. Wells that do produce oil?

Q. Yes.

A. I don't know, sir.

Q. Can you tell approximately?

A. I would not know at all.

Q. How many of the gas wells were cleaned out in 1933?

A. I don't know. Occasionally they bail the wells that need to be bailed to remove any liquid. The gas wells are bailed at intervals. The oil wells, I don't know how often it is necessary to clean them out. Probably they have not been cleaned out in quite a while. It may be necessary to bail rods out of wells to keep them pumping, those pumping oil, but I have no information of that sort prepared.

Q. You do maintain cleaning equipment in that field?

A. Yes, sir.

Q. Can you give any idea at all, Mr. Dum, of the approximate cost of operating that field for the year 1933?

A. No, sir.

Q. Or the cleaning out of wells for 1933?

A. No, sir.

Q. How many men work at the compressor plant at Petrolia?

A. I don't know, sir.

Q. Quite a number?

[fol. 493] A. Quite a number; yes, sir.

Q. How many of those men work in the operation of the gas wells in the Petrolia field—do all of them work on it?

A. You mean on the operation of the wells?

Q. Yes.

A. Well, Mr. Fitzhugh, the Pipe Line Department furnishes the men—that is, the men in the Pipe Line Department look after the turning in and turning out of wells in every field, and the Pipe Line Department has division headquarters at Petrolia, as does the Compressor Department. There is not a great deal of attention that is necessary in the operation of these wells to get the gas out, because there is no pressure regulation, you see; they remain on the line.

Q. Turn to page 53 of your exhibit. This page shows the Miller farm computations?

A. Yes, sir.

Q. How long has this Miller farm experiment been progressing?

A. It was started, I believed, either June or July first, 1929.

Q. Has that storage experiment conducted by your company on the Miller farm been a profitable one?

A. I would not say that it has, other than it has given information that was desired in an experimental manner to the company. So far as the revenue produced is concerned, I can't say that it would be.

Q. Does the company expect to continue storing gas on the Miller farm lease in the future?

A. I could not answer that, Mr. Fitzhugh, other than I believe they will have had all the data that they care to have in the near future and probably will put it back on the [fol. 494] same basis that it was formerly operated, and in this report I have estimated that that would be done, I believe, January first, 1935. Now, I think that is a reasonable assumption.

Q. Why, on page 53, where you state the decline in daily delivery rate for the Petrolia field proper, do you figure the daily delivery rate for the Miller farm at the same rate?

A. In the absence of any more specific data, I assumed,

because of the similarity of the production in the Petrolia field and because of the fact that the Miller farm wells, being there, will be operated probably over the same period of time, that the others will be. That is merely the best assumption that I could make under the circumstances.

Q. How near accurate do you suppose that to be, Mr. Dunn? Is it within fifty per cent accurate; would you say?

A. As far as the rate of decline is concerned?

Q. Yes.

A. Oh; I think so.

Q. Turn to page 135, please, sir. Where are the Arnold & Mercer No. 1 and the Ben Richardson No. 1 wells—where are those wells located?

A. They are located in Oklahoma. Just a minute and I'll tell you the county. I believe they are in Grady County.

[fol. 495] Q. Those two wells feed into the line that takes gas from the Chickasha district, I believe you said?

A. Yes, sir.

Q. Mr. Dunn, there are no regulations put on your company by the State or any governmental authority as to the production of gas, are there—that is, there is no proration of gas in the same sense that there is of oil production in this State?

A. No, sir. The proration as adopted by the Lone Star Gas Company was, I would say, strictly a voluntary application of proration.

Q. You spoke about Boyle's law. A simple statement of Boyle's Law would be to say that the volume of gas varies in inverse proportion to the pressure; is that right?

A. Yes, at constant temperature.

Q. At constant temperature?

A. Yes.

Q. There is also a natural law, isn't there, Mr. Dunn, that the volume of gas will vary in direct proportion to change in temperature?

A. That is Charles's Law.

Q. Yes, sir. That is, if you heat a volume of gas to a higher temperature it will expand and the volume will be greater?

A. That is correct.

Q. Consequently, if you cool it, it will shrink and the volume will be smaller?

A. Yes, sir.

[fol. 496] Therefore, in order for your illustration where you used the volume of air in a room and the illustration where you used the volume of air in an automobile tire to be true you have to assume that any changes in pressure would be conducted with a constant temperature being maintained?

A. Yes, sir. I thought I made that plain.

Q. Maybe you did, but I didn't get it. You spoke about the two methods used for finding the volume of gas in gas reserves?

A. Yes.

Q. One, I believe you said; was the pressure decline method?

A. Yes, sir.

Q. The other, I believe, was the porosity area method?

A. Yes, sir.

Q. Now, in each case where you had production and where you had available actual records of the company that show the changes in rock pressure, in all those cases in your exhibit you used the pressure decline method, did you not?

A. In all the cases where the data, in my judgment, was applicable to that method; yes, sir.

Q. Well, isn't it true in every case where you had production of several years, say, where you had a quite extensive history of the reserve, in all those cases you used the pressure decline method, did you not?

A. Yes, sir, over a period of time, with this reservation, and it may be necessary for me to give an explanation along this line to qualify that statement. We have, for example, [fol. 497] here a well that, when it is closed in, will in twenty-four hours, we will say, register one thousand pounds; the second day, one thousand and ten pounds, and so forth, until the well has rocked up, as we term it, to a maximum pressure. Now, then, it may take, and does in some cases, a considerable time for the maximum rock pressure to build up on certain wells. It may be that the well does not remain closed in long enough for the actual reservoir pressure to be determined, and we have changes in rock pressure on wells of that type, or shut-in pressures, which can not be interpreted in terms of reser-

voir pressure, because the reservoir pressure must be the maximum pressure, and in cases of that kind, and also where the withdrawal has been appreciable, and likewise any error that would come into it would result in a greater percentage of error of result, I have used the porosity area method.

[fol. 498] Q. Well, isn't it generally considered among geologists, Mr. Dunn, that the pressure decline method in cases where you have the basic data available, is much more certain than the porosity area method?

A. I don't know that it is, Mr. Fitzhugh. I would say this; however, that I would prefer to use it, provided I was satisfied that the data is better adapted to that application; and I might make this illustration of a case where it would not be applicable at all, in my opinion, and it would be much better to use the porosity area method: Let us assume that we have a reservoir producing gas that has a water-drive in connection with it. Now, this illustration is not applicable to these reserves of the Lone Star Gas Company; this condition does not exist, but I am merely citing it to show where it would be much more preferable to use the porosity area method. You take with reference to the East Texas Oil Field—we understand that is a water-drive; in other words, the water furnishes the motivating force and causes the oil to move—in other words, the water drives it. Now, if you do have a gas field with a water drive, which has been the case, the size of your reservoir would be constantly changing, due to—that is the effective size of it—an erroneous pressure decline to apply against any certain volume of withdrawal, but if you were able to determine the area of the reservoir and the reservoir pressure at any [fol. 499] certain date, then you may apply the porosity area method with a reasonable degree of accuracy.

Q. Now, while it might be true where you had some hydrostatic pressure in the wells that the Lone Star Gas Company has, and where there is no water-drive—

A. Yes.

Q. Your pressure decline method would probably be the best one where you could use it, wouldn't it?

A. I have used in every case the method that I feel is the best, based on the data that is available.

Q. I understand that, but I am just asking you—

A. Well, as a general statement, why, it may be the best

to use. I don't know that there is any distinction there between the two. I will say this, if you have accurate data in either case, your reserves are—by one method are just as accurate as the reserves by another method, in my opinion.

Q. Mr. Dunn, did your Company buy some wells from the Southern Oil and Production—or some Southern Company?

A. Yes, sir, they bought some wells from the Southern Oil and Production Company.

Q. *The Southern Oil and Production Company.* How many wells were they?

A. I don't recall, Mr. Fitzhugh. I believe I could name them all. They bought in some of them the whole interest, in some of them a part interest. There were a number of them; not a great many.

[fol. 500] Q. Where were they located—do you know?

A. In the general area of the Leeray District and the Eastland-Cisco area.

Q. Can you point out those wells on any maps appearing in your exhibit?

A. I don't know that I can point out the wells. I can name them, I think.

Q. All right, sir, do that; maybe we can trace them that way.

A. We acquired an interest in the Chesley No. 1 Well, in the Chesley No. 2 Well, in the Ward No. 2 Well, in the Winchell No. 1 Well, in the Brashears No. 2 Well—that is all I recall at the present time, Mr. Fitzhugh. There may have been some others.

Q. Did you acquire some undeveloped leaseholds from the same company?

A. I am sure that we did. I don't know directly of my own knowledge.

Mr. Fitzhugh: That is all.

Redirect examination.

Questions by Mr. Griffith:

Q. Mr. Dunn, it has just occurred to me that you have been talking about rock pressures throughout your examination, and you never have defined what you mean by rock

pressures. Just explain to the jury how the term rock pressure is used.

A. Well, Mr. Griffith, I have used rock pressure in this [fol. 501] exhibit because it is commonly used. I prefer to use shut-in pressure or reservoir pressure. The term reservoir pressure means the closed-in pressure as taken at the well-head on a producing well, which indicates the exact pressure as shown by your gauge at the time you take the pressure. Now, then, as I say, it takes time for that rock pressure to build up to the maximum, and I prefer to use shut-in pressure, because it is a pressure indicated with the well shut in, and then to qualify it further by saying maximum shut-in pressure—that means the maximum pressure to which the well will build up by gas flowing to the point where the gas has been withdrawn; in other words, gas that is withdrawn through a well has a tendency to lower the pressure at the point where the well taps the reservoir to a, what we term, a working pressure; then with the well shut in gas flows toward that point where the working pressure has been lowered due to withdrawal of the gas, until the pressure equalizes or until gas is again withdrawn and the pressure is lowered. I don't know, Mr. Griffith; that has been rather rambling. I don't know whether that gives the explanation you want or not.

The Court: What is the difference between rock pressure and what is called bottomhole pressure?

A. Well, Judge, rock pressure, as we ordinarily use the term, is the pressure taken with a pressure gauge at the wellhead, at the surface; and that is usually in terms of [fol. 502] gauge pressure, because it is taken with a pressure gauge. Now, then, bottomhole pressure is the pressure at the bottom of the hole, and it is either—may be calculated or it may be taken with a bottomhole bomb, which is quite an instrument; that is not in general use anywhere, I believe, except in large oil fields like in East Texas, etc.; it has not been adopted and would not be practicable or necessary in gas fields, particularly; but the bottomhole pressure is the pressure that takes into account, whether calculated or actually measured, the weight of the column of gas from the bottom of the hole to the top of the well per square inch.

Q. Mr. Dunn, Mr. Fitzhugh inquired as to the Company's being regulated in the matter of the proration of gas.

A. Yes, sir.

Q. Of course, the Legislature of Texas has passed several laws designed to bring about a proration of gas purchases in the several gas fields.

A. I understand that they have.

Q. And which Acts, I believe, have been declared invalid; but I will ask you whether it has been the policy of the Lone Star Gas Company over a period of many years to buy as much gas from the independent producers in the field as it does from its own wells?

A. That has been their policy, yes, sir.

Q. In other words, assuming a situation where the Lone [fol. 503] Star Gas Company had a ten million foot well on one lease, and on an adjoining lease an independent producer had a similar well of ten million feet open flow, is it the practice of the Company, and has it been the consistent practice of the Company, to purchase as much gas from the independent producer as it does from its own well?

A. That has been their practice and is now their practice.

Mr. Griffith: That is all.

Recross-examination.

Questions by Mr. Fitzhugh:

Q. Where you make purchases you pay the magnificent price of about two cents a thousand cubic feet, too, don't you?

A. I don't pay anything, Mr. Fitzhugh. I just keep up with the production.

Q. Well, that is what most of the independent producers get for gas when you purchase it from them isn't it?

A. No, sir, the price in the Panhandle Field is two cents per thousand cubic feet, but that is the only field in which the two cent price is paid.

Mr. Fitzhugh: That is all.

Redirect examination.

Questions by Mr. Griffith:

Q. Does the Company pay the prevailing price in every field where it operates?

A. In every field, yes, sir.

[fol. 504] Recross-examination.

Questions by Mr. Fitzhugh:

Q. And it sets the price, doesn't it, in every case?

A. I wouldn't say that, no, sir; not in every case at all.

* * * * *

[fol. 505] D. A. HULCY, a witness for defendant, having been recalled, testified as follows:

Direct examination.

Questions by Mr. Griffith:

Q. You are the same D. A. Hulcy who has heretofore appeared and testified in this case?

A. Yes, sir, I am.

Q. In stating your qualifications, Mr. Hulcy, did I understand you to say that you had been called upon at various times to make appraisals in respect of developed oil and gas properties?

A. Yes, sir, I have done that—performed those duties.

Q. I don't believe you gave your experience in detail in stating your qualifications, and I will ask you to do that at this time.

A. Since my connection with the Lone Star Gas Company, which goes back to 1920, upon several different occasions I have made an appraisal of certain oil and gas properties, some of which were purchased by the Company, others of [fol. 506] which were contemplated purchases and which were not actually purchased. At December 31, 1931, I made an evaluation of all of the oil and gas properties owned and operated by the Lone Star Gas Company at that date. In addition to these specific things which I have mentioned, dating from 1922 up through and including 1925, I made appraisals of the individual oil and gas properties, such appraisals being necessary in connection with the preparation and filing of depletion schedules with the Federal income tax returns. Since that time, when the Depletion Law was changed, I have continued to handle those same matters in connection with the Federal tax returns, until about two or three years ago. Since that time they have been prepared

under my general supervision—I mean by that, I have examined them and have checked them after they have been prepared by other employes of the Company. I believe that is about all, Mr. Griffith.

Q. Would you say, as a result of your experience, that you are familiar with the methods generally accredited and recognized in connection with the evaluation of gas reserves?

A. Yes, sir, I think that I am.

Q. Are you in a general way familiar with the Report and Findings of Gas Reserves of Lone Star Gas Company, as set forth in an exhibit which has been introduced in evidence here, by Messrs. Dunn and Kendrick, and styled “Defendant’s Exhibit 30”?

[fol. 507] A. Yes, sir, I have seen and have gone over parts of that report. I haven’t gone over it in detail.

Q. Do you know the volumetric determination of the natural gas reserves of Lone Star Gas Company as of January 1, 1933, as set out in that report to be some three hundred and sixty-seven billion cubic feet of gas, plus?

A. Yes, sir, I do.

Q. Taking that figure as a predicate, have you prepared an evaluation of the gas reserves owned by the Lone Star Gas Company as of January 1, 1933?

A. Yes, sir, I have.

Q. Has that evaluation been prepared in the form of an exhibit?

A. Yes, sir.

Q. To be introduced in this case?

A. Yes, sir, it has.

Q. Will you produce it, please? (Witness produces exhibit). Is this the appraisal to which you refer, Mr. Huley, being styled on the title cover “Lone Star Gas Company, Appraisal of Gas Reserves, January 1st, 1933”?

A. It is.

Mr. Griffith: We offer the exhibit so identified by the witness, in evidence.

(Thereupon the document above referred to was marked as Defendant’s Exhibit No. 31.)

[fol. 508] Mr. Fitzhugh: May I ask a question or two of the witness?

Mr. Griffith: Certainly.

Examination by Mr. Fitzhugh.

Q. Mr. Huley, in this exhibit do you make a segregation of the gas reserves as between Oklahoma and Texas?

A. Of the gas reserves, yes. They are a duplication of the exact amount as shown in Exhibit 30, that is the exhibit prepared by Mr. Dunn and Mr. Kendrick.

Q. Is the separation made on Sheet 3 a complete separation as between Texas and Oklahoma?

A. Yes, sir, it is.

Q. Is there a segregation on Sheet 2?

A. No, sir, there is not.

Q. That sheet applies to both Texas and Oklahoma properties?

A. It does.

Q. Mr. Huley, have you ever purchased any leases for the Company?

A. No, sir, I have not.

Q. Are you familiar with the market value of leases in the various fields from which the Company takes gas?

A. No, sir, I can't say that I am.

[fol. 509] Q. You don't know the prevailing price per acre being paid for leases in the various fields?

A. No, sir, I do not.

Q. Does this appraisal of yours and this method of finding value of gas reserves follow the same method used in the report you say you prepared for Federal income tax purposes?

A. Yes, sir, it does.

Q. The same method?

A. Yes, sir.

Q. The method allowed by the Government for the computation of taxes isn't necessarily a method that would give the proper appraisal value from a market standpoint, isn't that true?

A. No, sir, that is not true, Mr. Fitzhugh. I think that an appraisal prepared in that manner would give somewhere near the market value of such reserves. If I may make this explanation at this time in connection with the values developed for Federal tax purposes, I would like to.

Q. All right.

A. Under the Discovery Section or Clause of the 1918-1919 Revenue Act the values placed on producing proper-

ties—that is, where they came under the Discovery Clause of the Act, there was set out first that the values to be used or to be given preference would be the same as sales prices and purchases of comparable properties under comparable conditions. That was supposed to be the preferred method of determining prices. In the absence of being [fol. 510] able to do that or to arrive at values in that manner, then this manner in which I have prepared this report was next preferred, and I might say that, to my certain knowledge, was actually used in excess of ninety or ninety-five per cent of the total cases, because we can understand that in each and every case it is hard to find a purchase and a sale of comparable properties under comparable conditions.

Q. On Sheet 4 in your exhibit, where you show a Summary of Future Developing Costs Necessary to Recover Gas Reserves—

A. Yes, sir.

Q. —three fields are scheduled.

A. Yes, sir.

Q. Shamrock, Leeray, and Sipe Springs.

A. That is correct.

Q. Some of those are in Texas and some in Oklahoma, are they not?

A. No, sir, they are all in Texas.

Q. They are all in Texas?

A. Yes, sir.

[fol. 511] Q. Is there anything on page 5 that has any Oklahoma aspects?

A. Yes; the total wells now owned and operated do include, as shown on page 5, of this Exhibit, does include certain Oklahoma wells.

Q. How about on page 6?

A. Yes, Oklahoma wells are also involved on page 6 of the Exhibit.

Mr. Stout: Your Honor, we would like to renew our objection as heretofore made on yesterday and the day before, that we made previously on this same question.

The Court: You mean, that there is no segregation?

Mr. Stout: Yes.

The Court: Overrule the objection.

Mr. Stout: Note our exception.

Questions by Mr. Griffith:

Q. Mr. Hulcy, please give an explanation of the work that you have attempted to do in the computations set forth in this appraisal, covering the gas reserves of the company as of January 1, 1933.

A. First I might say that this exhibit is a mathematical calculation of the worth of an asset, namely gas reserves, which were owned by Lone Star Gas Company as at January 1, 1933. This exhibit is based principally upon certain information furnished by Mr. Kendrick and Mr. Dunn and set out in their report which is styled Exhibit No. 30 in this case. The particular information that I have referred [fol. 512] once to that was furnished by Mr. Kendrick and Mr. Dunn is the marketable gas reserves belonging to the Lone Star Gas Company, and as shown on page 144 of their report, in the amount of 367,362,084,000 cubic feet. Also this exhibit refers to the number of additional wells that will be necessarily drilled in order that the net marketable reserves may be recovered, and that information is set out in detail on page 142 of the Kendrick-Dunn report. Taking that information as basic, I will offer the following explanation in connection with this exhibit:

Page 3 of Exhibit 31 sets out in detail the net gas reserves in thousand cubic feet as shown for each particular field. This is the same information taken from the Kendrick-Dunn report. Unit values—that is, the sales price or unit value per thousand cubic feet has been applied to the marketable or net gas reserves as shown in the first column. The gas reserves multiplied by the unit value gives an amount which is styled gross value. The first field shown on this page is the Panhandle field, where a unit value of 4.7 cents per thousand cubic feet is shown. I would like to make this explanation in connection with that price.

The present field price in the Shamrock or Panhandle field is two cents per thousand cubic feet. It has been estimated and assumed by me that that price will increase over a period of time, and this price of 4.7 cents per thousand cubic feet is the weighted price, as determined, which was in this manner: It was estimated for the years of 1933 and [fol. 513] 1934 that the price of two cents would remain in effect; that the next three years, the price would be three cents per thousand cubic feet; and that the next three years the price would be four cents per thousand cubic feet; and

that for the next three years the price would be five cents per thousand cubic feet, and that thereafter a price of six cents per thousand cubic feet would prevail, and six cents is the maximum price I have used, and based on time alone and giving no particular reference to volume, the unit price of 4.7 cents is the weighted price.

Q. Now, Mr. Hulcy, why do you assume that the field price of gas in the Panhandle, or in the Shamrock district of the Panhandle would increase over a period of years? In other words, is there any logical basis for that assumption?

A. Yes, Mr. Griffith, I believe that there is. I have talked at length with the operating executives of the Lone Star Gas Company, and I have particular reference to Mr. Frank L. Chase who is a vice president and the chief operating officer of the company; to Mr. Percy Hall, chief of the land and lease section of the Lone Star Gas Company, and it is their belief, based on their experience, that it would be impossible to continue the price of two cents in this Panhandle district throughout the life of the field; and in addition to that, I have made certain investigations as to the prevailing prices in the same field—the same general field, I should say, but in the adjoining counties, and those prices, [fol. 514] and I have reference to the present prices, range from three and one-half cents per thousand cubic feet to a price of eight cents per thousand cubic feet. Therefore, in view of that, it seemed to me that it was very reasonable to assume that the average field price of gas in the Panhandle district, beginning January 1, 1933, and continuing through the entire life of the field, as I have estimated it, would be very reasonable.

Q. Now, with the exception of that assumption as to an increase in the price for gas purchased in the Shamrock district over a period of years, have you in applying your unit value on page 3 to the gas reserves for the several fields, used the price per thousand cubic feet which presently prevails as the field price, and which price has prevailed over a period of years?

A. Yes, I have, with this exception: I have used a price of ten cents per thousand cubic feet in the Petrolia field. There is no gas being purchased in the Petrolia field direct or in the Petrolia field proper, but ten cents is the agreed price for this gas which was determined in connection with

federal income tax returns as of 1917 or 1918 or thereabouts, and for that reason I have used a price of ten cents per thousand for the gas in the Petrolia field; but in all other cases the prices set out and shown on page 3 of Exhibit 31 are the same as the actual prices being paid presently and which have been paid for some time in each respective field.

The total shown on page 3 is \$19,451,614.00, that being [fol. 515] the gross value of net gas reserved owned by Lone Star Gas Company at January 1, 1933. Page 4 shows the number of wells; that is, those estimated as being necessary to be drilled in the future to recover such gas reserves by fields—namely, the Shamrock field, the Leeray field, and the Sipe Springs field, or requiring a total of 135 wells. The next column shows the average cost per well, and I might add that this average cost is based on the cost as shown and as developed in the Steinberger-Biddison-Connor appraisal, which was introduced in evidence yesterday. These unit costs per well cover the direct costs—that is, the gas well construction and gas well equipment, plus an amount to cover the undistributed costs or in other words, the overheads. The number of wells, times the unit cost, gives the total cost that is estimated will be expended in the future, and that amount is shown to be \$2,658,619.00.

Page 5 of the Exhibit sets out in detail the direct recovery costs in connection with the recovery of gas reserves. The total gas wells now owned and operated by the company is shown to be 262, and it is also shown that additional wells necessary to be drilled to recover gas reserves as shown on schedule 2, which is page 4, in the amount of 135 wells, or making a total of 397 wells. That represents the total number of wells that will be operated from the beginning of the period to the end of the period. Naturally, some of those wells will be abandoned before some of the [fol. 516] other wells are drilled, so the average would be one-half, or 200 wells, that would be operated over the entire period. Based on operating costs of the company, it is estimated that it will require \$200.00 per well per annum to operate such wells and recover the gas reserves. Therefore, an average of 200 wells at \$200.00 per well per annum would be an estimated annual recovery cost of \$40,000.00; and that the wells will be operated for a total of twenty years or that the estimated total recovery cost for the entire period of twenty years would be \$800,000.00.

In addition to that recovery cost, an allowance has been made to cover gross production tax. The gross value of the net gas reserves as shown on schedule 1, which is on page 3 of the exhibit, are shown in the amount of \$19,451,614.00 and the gross production tax rate that has been used by me is $2\frac{1}{4}$ per cent, or making a total of \$437,661.00. Page 5 further shows a summary or recapitulation of the recovery costs, and that total is shown to be \$1,237,661.00.

Page 6 of Exhibit 31 sets out the salvable value of materials which will be recovered from wells upon abandonment. The total value of materials in wells now owned and operated, and this figure is shown in the Steinberger, Biddison, Connor appraisal, is \$1,285,234.00, and of the materials that will be placed in the additional wells which it is estimated will be drilled in the Shamrock district, amounts to \$3,432.00 per well, or a total of \$295,152.00 or additional materials that will be placed in the wells in the Shamrock district. The material costs for the wells in the [fol. 517] Leeray district amount to \$9,851.00 or a total of \$305,381.00 of additional materials that will be placed in wells drilled in the Leeray district. Wells drilled in the Sipe Springs district will have an average cost for materials of \$6,337.00 per well or a total of \$114,066.00 for the materials placed in all of the wells in the Sipe Springs district. The total of the materials in all of the wells—that is, the future wells—amounts to \$714,599.00, so the total materials in the wells now owned and operated, plus the materials to be placed in future wells amounts to \$1,999,833.00.

Q. Now those well costs are based upon the appraisal cost as set forth in the Steinberger-Biddison-Connor appraisal which is in evidence here, and styled Exhibit 28?

A. That is correct. Through studies which have been made, and the experiences of the company, it has been developed that average wells upon abandonment, that 75 per cent of the original materials therein will be recovered, and that such materials that are recovered will have a value of 75 per cent of new value. Therefore, the materials recovered—that is, 75 per cent of 75 per cent, would be approximately 52 per cent of the new value. It has been further determined that the cost of abandoning—that is, pulling the casing and tubing out of the well, will amount to about 50 per cent of the salvage value of the materials;

in that case, the salvable value would amount to about 26 per cent of new value. I have used a round figure of 25 per cent of the new value of the materials, and the 25 per [fol. 518] cent, when applied to the total materials now in wells and to be placed in wells, shows an amount of \$499,958.00.

Q. Now Mr. Hulcy, when you say it has been determined that a certain per cent of the value of the material will be recovered, do you mean that it has been determined, based upon the company's own experience?

A. Yes, that is quite correct; as taken from the records of the company. Now, the information shown on pages 3, 4, 5 and 6 is brought forward to page 2 of the Exhibit, and particular reference is made to each schedule on page 2. The first item appearing on page 2 is the estimated gross withdrawal value; the complete detail of that amount is shown on page 3. Appearing immediately thereunder is shown the cost of recovery and first is the future developing cost which will be incurred by the company, as set out on schedule 2, in the amount of \$2,658,619.00. Next appears recovery operating costs, as shown in detail on schedule 3, in the amount of \$1,237,661.00, making a total of \$3,896,280.00 for recovery costs.

Q. By the way, Mr. Hulcy; is that annual cost of operating a well, of \$200.00 per year, taken from the actual experience of the company, or is it in excess of the company's experience?

A. It is in excess of the company's experience, Mr. Griffith; the average for the year 1932, including ad valorem taxes, was about \$160.00 per well, but I have used \$200.00 per well.

Q. To the extent that you have used an excess cost over the actual experience of the company, would that tend to [fol. 519] reduce the present fair value of the net gas reserves, as determined by you?

A. That is correct. I felt that the \$200.00 would be a fair figure. Appearing immediately under the total recovery cost, I show the estimated salvable value of gas well equipment, and the detail of that amount is shown on schedule 4, in the amount of \$499,958.00 and that amount, when deducted from the total recovery costs, shown above, leaves as a net cost of recovery, \$3,396,322.00. The recovery cost, when deducted from the estimated gross with-

drawal value, leaves as estimated net recovery value of gas reserves, an amount of \$16,055,292.00.

Q. Now, if all of that gas were to be marketed today, would that be its worth?

A. That is true.

Q. But of course, Mr. Huley, it can only be reasonably expected that that gas will be marketed over a period of years?

A. That is correct.

Q. And over what period of years have you estimated that the gas reserves which are evaluated by you will be marketed?

A. Over a period of twenty years, and I might add in that connection, Mr. Griffith, that the twenty year period was based upon information received from Mr. Dunn, or as a result of conferences with him, and based largely upon his judgment that it would require approximately a twenty years period to produce and/or withdraw the total reserves set out in this exhibit.

Next, we show what we term the present worth factor. [fol. 520] Now it might be well if I made an explanation of what I mean by present worth factor. As Mr. Griffith just said, if all of the gas reserves shown by me were going to be marketed within the first year, the \$16,000,000.00 plus would be the value of those gas reserves, but it is estimated that these reserves will be recovered over a twenty years period, and I have assumed that the average would be ten years. The reserves here shown were actually being recovered by the company during the year 1933, and they are being actually recovered in the year 1934, and that will continue throughout the entire period, and so I have taken ten years as being a fair average for the entire amount of gas reserves. The present worth factor which I have used and which is shown on page 2 is .46319. The basis of that factor is that that amount of money deposited at the first of January, 1933, and left at an eight per cent compound interest rate, would be the equivalent of \$1.00 at the end of a ten year period. This is what is known as a compound discount factor. It reduces the value of a dollar which will be received in a period of ten years to its present worth, as at today, which in this particular case would be, in round figures, 46 cents on the dollar. Now, that is what I have particular reference to, and the way I

have used this compound discount factor in arriving at present worth.

Q. Well, in other words Mr. Huley, if you figure the worth of money at eight per cent per annum, 46 cents paid to you today is as much money as one dollar paid to you ten years from today?

A. That is correct, and so upon the application of the [fol. 521] present worth factor to the estimated net worth of gas reserves, I find the present fair value of gas reserves, including gas well equipment and construction, in the amount of \$7,436,650. That is the value as I have determined it, to cover both the gas reserves and the present method of withdrawing or recovering those reserves.

I have set out just below on this page 2, and show gas well equipment and construction, as shown in the appraisal dated January 1, 1933, and when I say appraisal, I have particular reference to the Steinberger-Biddison-Connor appraisal which has already been entered as an exhibit in this case. The amount as shown for gas well equipment and construction is \$3,894,317.00. Added to that amount is \$860,644.00 which is the proportion of the undistributed general costs, or in other words, the overheads, that are applicable to the direct gas well construction and gas well equipment amounts. I might add there, Mr. Griffith, that the \$860,000 is 22.1 per cent of the direct costs. The actual per cent of the undistributed costs shown in the appraisal, to the direct costs, amount to only just a little in excess of twenty per cent. It was necessary that I use an estimated amount, for this reason. It happens that in working out of the value of gas reserves and a determination of the proper percentage of overheads applicable thereto, that we get on what might be termed dead-center. You can not make a specific finding of percentages of overheads until the fair value of net gas reserves are determined, and can be included therein. I can not determine the net value [fol. 522] of gas reserves until such time as the percentage of overheads have been determined in the main appraisal, and so the 22 per cent estimate was made, in an amount which we felt was liberal enough to take care of any contingencies that might come up, and it is approximately two per cent higher than the percentage of overheads that are actually shown in the Steinberger-Biddison-Connor appraisal. The total then, of the gas well equipment and

construction, plus the overheads applicable thereto amounts to \$4,754,961.00, and that amount deducted from the present fair value of gas reserves as shown above, leaves as the present fair value of net gas reserves in the amount of \$2,681,689.00, as at January 1, 1933.

Q. And in your opinion, would there be any substantial difference in the present fair value of gas reserves determined by you as of this date, to wit: June 15, 1934, and January 1, 1933?

A. No substantial difference, Mr. Griffith. There would be something less, I would say, due to the amount of gas reserves which have been produced and withdrawn during the intervening period.

Q. Now, if you had used the actual overhead construction costs which were determined to be approximately twenty per cent, in the Steinberger-Biddison-Connor appraisal, instead of the twenty-two per cent which you actually did use, would that have served to increase, rather than decrease the figure of \$2,681,689.00, which you have determined, in Exhibit 31, to be the present fair value of gas reserves?

[fols. 523-524] A. Yes, sir, it would have increased that value by approximately \$75,000.00.

Q. Now, Mr. Hulcy, if no wells had to be drilled and equipped, and if no wells had to be operated over a period of years in order to recover this gas, would there have been any occasion for you to make the deduction of the costs of drilling the wells and the cost of operating the wells in the manner that you did, to determine the net value of the gas reserves of the company?

A. No, sir; if it had not been necessary to drill or to operate wells, then it would not have been necessary to have included them herein.

Q. But these are all capital costs and operating costs which necessarily would be incurred in producing the gas at the mouth of the well on top of the ground?

A. That is correct.

Q. Is there any further explanation which you think needs be made in respect of your Exhibit 31?

A. Well, about the only additional statement that I would like to make, Mr. Griffith, is that, based on the net marketable gas reserves as found by Messrs. Kendrick and Dunn, and as used by me in the preparation of this evalua-

tion, the unit value per thousand cubic feet found by me, amounts to 73/100 of one cent per thousand cubic feet for the gas in the ground, and that appears to me to be a very conservative figure.

Q. That is all.

[fol. 525] E. A. STEINBERGER, a witness for defendant, recalled, testified as follows:

Direct examination.

Questions by Mr. Griffith:

Q. You are the same E. A. Steinberger who has heretofore appeared and testified in this case?

A. I am.

Q. Mr. Steinberger, have you prepared for presentation as an exhibit in this case a compilation of the Undeveloped Leaseholds of the Lone Star Gas Company, for which no reserve was calculated in the Kendrick and Dunn Exhibit herein, known as Defendant's Exhibit 30?

A. I have.

Q. Upon what basis did you prepare that exhibit?

A. I was furnished by Messrs. Kendrick and Dunn a list of leases for which they did not in whole or in part calculate any reserves.

Q. And those leaseholds would be the unoperated leaseholds of the Company?

A. That is correct.

Q. Is this exhibit which you have prepared and styled on the title-cover as "Lone Star Gas Company. Leaseholds—Undeveloped (Miscellaneous Leases for which No Reserve Has Been Calculated). Determination of Present Value, as Of January 1, 1933"—was this prepared by E. A. Steinberger, Valuation Engineer?

[fol. 526] A. Yes, sir; it is.

Mr. Griffith: We offer this in evidence as Defendant's Exhibit No. 32.

(Thereupon the document referred to above was marked for identification as Defendant's Exhibit No. 32.)

Mr. Stout: May I ask the witness a question or two?

The Court: Yes, sir.

Mr. Stout: As I understand it, this exhibit includes property where there are no gas wells of any kind existent?

A. That is correct.

Mr. Stout: You don't know, of course, other than your opinion, that there might be any gas found there?

A. That is merely taken from the books of the Company covering leases for which they spent money.

Mr. Stout: Yes, sir. It does not cover any territory ever proven to have gas wells under it?

A. I don't know about that. That is based merely upon the judgment of the Company, what leases they cover.

Mr. Stout: We make this objection. It is clearly not used or useful. We can't see any purpose of the exhibit. What they have here, as I understand it, they have leaseholds set out wherein they have no gas wells of any kind [fol. 527] or character whatsoever, where the witness testifies it was taken from the Company's books, and not even in a proven territory. We think, if the Court please, it comes directly in line with that Columbus Gas Decision.

The Court: I am not sure that I understand just what this is. Do I understand that these leases which you show in this exhibit were purchased by the Company and afterwards the Company became satisfied that they were not productive?

A. No, sir; these are leases purchased by the Company to provide for future gas supplies.

The Court: And the Company still owns them?

A. Yes, sir; and pays rent on them and expects to drill them whenever they need them for a future supply.

The Court: They are still on the books of the Company as assets of the Company?

A. That is correct.

The Court: And the Company has them, believing they contain gas?

A. Yes, sir.

Mr. Fitzhugh: These are leases, or portions of leases, some of which may have some gas wells on them; is that right?

A. These are leases that were purchased by the Company.

Mr. Fitzhugh: But every lease that occurs in this exhibit, there is no production at the present time?

[fol. 528] A. At the present time, but there probably will be in the future.

Mr. Fitzhugh: You will not get a single cubic foot of gas from any lease appearing in this exhibit?

A. I don't know.

Mr. Fitzhugh: You don't know that any of the leases contained in this exhibit may have gas under them or on them?

A. Personally, I don't know; but those leases were bought upon the recommendation of the Geological Department, and the Management of the Company saw fit to buy those leases in order to have future gas supplies.

Mr. Fitzhugh: We submit, Your Honor, that the leases in this exhibit are not even shown to have any gas.

Mr. Griffith: I don't know how I could convince the Court that *that* these leases have any gas underlying them unless I drilled some wells on them.

Mr. Fitzhugh: That is our objection.

Mr. Griffith: But, if Your Honor please, there is no deception about this exhibit. It plainly states on the title-cover that it is "Leaseholds—Undeveloped (Miscellaneous Leases for which No Reserve Has Been Calculated)". Now, subsequent witnesses will testify in detail that the volume of undeveloped leaseholds, or the total acreage of undeveloped leaseholds carried by this Company are used and [fol. 529] useful in connection with its public service operations, are necessary to provide gas reserves for the future, and that the amount invested by the Company, shown to be something slightly less than nine hundred thousand dollars in these leaseholds, may be likened to working capital or materials and supplies on hand, and brought within the exact rule laid down by the Supreme Court of the United States in the Columbus Gas and Fuel Case; but contrary to the statement by Judge Stout as to what that case holds. Of course, we concede that if the Company carried an unreasonable amount of acreage that was unoperated, that it might be that it would not be proper to include all of that acreage in the rate base; but after all, in the last analysis, it will be a question for this jury to determine whether that is reasonable. We might also say, if Your Honor please, that the author of this exhibit has made it in conformity with the allegations of our petition wherein we attack the order and opinion of the Railroad

Commission of Texas, which is in evidence here, and in which opinion and in the findings of the Commission they make express findings as to the value of these particular leases. The Commission included these leases in their so-called rate base or determination of fair value.

The Court: I think the question, and the only one to be determined here, is whether it can be properly connected [fol. 530] up as used and useful property to the public service operations of the Company in serving the public. Upon your statement that you will show this, I will admit it; but if you fail to so show, it will be stricken.

Mr. Stout: Our objection goes more properly to the weight of it; but we don't think it is proper.

The Court: Unless he connects it up with proper testimony showing that these leases are used and useful to the public service operations of the Company, then it will be stricken.

Mr. Stout: Note our exception.

Q. Now, Mr. Steinberger, please refer to this Exhibit 32. As stated on the title cover of the exhibit, this purports to do nothing other than show the leaseholds which are undeveloped and which are owned by the Company as of January 1, 1933, and for which leaseholds there has been no attempt to calculate gas reserves in the Kendrick and Dunn appraisal in evidence here as Defendant's Exhibit 30?

A. That is correct.

* * * * *

[fol. 531] Q. Just take the first lease that appears on that page.

A. The first lease that appears on that page, being Lease 684, is located in Stephens County, Texas. The total acreage in that lease is 80. The Lone Star Interest is seven-eighths, or .875 per cent, or $87\frac{1}{2}$ per cent; resulting, therefore, in a Lone Star Acre Interest of 70 acres. The original cost of that lease was \$83.32; the rental paid on that lease to December 31, 1932 was \$333.33.

Q. When you speak of rentals, do you mean the delay rentals payable under oil and gas leases?

A. That is correct. Other Incidental Expenses which [fol. 532] cover properly recording fees, notary fees, and other court costs, amounted to \$26.87; resulting in a total cost of this lease, as of December 31, 1932, of \$443.52. There

was no reserve calculated for the entire lease; therefore, the Acre Interest for which No Reserve was calculated is 70, or 100 per cent of the Lone Star Interest, and the Cost of the Lease, as of December 31, 1932, is \$443.52. Now, in the case where there is part of a lease on which Reserve has been calculated, we have only used that portion of the lease which has been excluded in the Dunn and Kendrick determination of gas reserves. As an illustration, I refer to page 4 of this exhibit. The first lease on top of that page being Lease 1364, located in Eastland County, Texas, being 120 acres, of which the Lone Star Gas Company has a seven-eighths interest, or $87\frac{1}{2}$ per cent of 120 acres, resulting in a Lone Star acre interest of 105. The original consideration, or original payment for this lease was \$1,200.00; the delay rental payment, as of December 31, 1932, amounted to \$360.00; incidental expenses, such as recording fees, and bringing the title up to date, and other court costs, amounted to \$67.72; or a total cost of this lease, as of December 31, 1932, of \$1,627.72. There was a total acreage of 120; the Lone Star Acre Interest 105. The Dunn and Kendrick Report included $87\frac{1}{2}$ acres as calculated reserves, leaving $17\frac{1}{2}$ [fol. 533] acres as undeveloped; or for which portion no reserve was calculated; this figure being 16.66 per cent, I, therefore, applied this per cent to the total lease cost, namely \$1,627.72, and arrived at a present value of this lease at \$271.18. In other words, 16.66 per cent of the total cost of \$1,627.72 is \$271.18.

Q. Now, in a similar manner, and based upon the determinations made by Mr. Dunn and Mr. Kendrick covering the acreage for which reserves had been calculated, and for which reserves had not been calculated, did you carry forward in the last money column on each of the pages in Exhibit 32 the actual cost of the lease to the Lone Star Gas Company?

A. That is correct. The last money column represents the out-of-pocket expense to the Lone Star Gas Company for these leases.

Q. In no case is there any appraisal or write-up in connection with the value of these leases?

A. There is not.

Q. Each and every cost shown in connection with Exhibit 32 is the result of the actual expenditure of cash by the Lone Star Gas Company in the procuring of those leases and in the payment of the delay rentals thereon?

A. Represents the actual cash cost of the original consideration and the delay rentals. It does not include in each instance the cost of procuring such rentals—the cost of acquisition.

[fol. 534] Q. The cost of acquisition of the leases.

A. The cost of acquisition of the leases.

Q. Included under the heading of Incidentals, which I take to mean Incidental Expenses, there is set forth and capitalized no cost of procuring the leases?

A. There is not.

Q. Now, what is shown in Defendant's Exhibit 32 as to the actual cost to the Lone Star Gas Company of the leases in Texas for which no reserves have been calculated by Messrs. Dunn and Kendrick in Defendant's Exhibit 30?

A. By referring to page 25 of Defendant's Exhibit 32 it will be noted that the total cost of leases for which no reserve has been calculated within the State of Texas is \$842,874.48.

Q. Now, refer, please, to page 29 of Defendant's Exhibit 32; what has been the actual cash cost to Lone Star Gas Company of the leases set forth at pages 26 to 29 in the State of Oklahoma, and for which there has been no calculation of gas reserves?

A. That amount is \$50,460.80.

Q. \$50,416.80, isn't it?

A. Yes; \$50,416.80.

Q. Giving a grand total of costs of undeveloped and unoperated leases of the Lone Star Gas Company, in both [fol. 535] Texas and *and* Oklahoma, and for which gas reserves have not been calculated, in what amount?

A. The total cost of the leases for which no reserve has been calculated for the entire Lone Star Gas Company System in both Texas and Oklahoma is \$893,291.28.

[fol. 536] Q. Mr. Steinberger, in order that the jury may not misunderstand this determination of costs of these leaseholds was made in respect of the leases which the company had as of January 1, 1933?

A. That is correct.

Q. Some few of these leaseholds have been cancelled and surrendered since January 1, 1933; is that right?

A. That may be true. I don't know that, Mr. Griffith. That is an Accounting Department matter.

Q. But since January 1, 1933, the company has also acquired additional leases, which are not set forth in connection with your Exhibit 32?

A. That is correct. I do know that the company has acquired additional leases since that time, as I was furnished a copy of all such leases and purchase notices.

Q. Would you say, Mr. Steinberger, that in the time from January 1, 1933, up to the present time there has been no substantial change in the total cost to the company of the leaseholds in Texas and Oklahoma which are unoperated and undeveloped and for which there has been no calculation of gas reserves in volume?

A. To my best knowledge there have been no substantial changes.

Cross-examination.

Questions by Mr. Fitzhugh:

Q. Turn to page 3, Mr. Steinberger. Look at Lease No. 1318. The cost shown for that lease is \$2,611.36? [fol. 537] A. Yes, sir.

Q. And the acre interest for which no reserve has been calculated is 169.2?

A. Yes, sir.

Q. Does that lease cover acreage upon which a dry hole has been found?

A. I don't know. You understand, Mr. Fitzhugh, as I previously testified, that the column, for instance, under which acre interest for which no reserve has been calculated is shown, was furnished to me by Mr. Dunn.

Q. Yes, sir. You don't know whether it covers an area disproven or found to be dry or not, do you?

A. I don't know. In connection with this Lease 1318, referring to page 3 of Defendant's Exhibit 32, it will be noted that the Lone Star acre interest is 287.3 acres. The acre interest for which no reserve has been calculated is 169.2, resulting in a percentage of 58.89 per cent.

Q. In any event, Mr. Steinberger, no acreage has been eliminated from the list of leases on account of its having been definitely disproven to be gas-bearing because the lease covers acreage definitely proved to be non-gas-bearing?

A. Mr. Fitzhugh, I could not answer that question. I don't know, because, as I testified before, I took the acreages furnished me by Mr. Dunn.

Q. Well, you understand the method which Mr. Hulcy is using in valuing gas reserves, do you not?

A. I know the method of it; yes, sir.

[fol. 538] Q. Well, now, if the value of gas reserves in this case should be determined by a consideration of this exhibit of yours, which covers the undeveloped leaseholds, together with the valuation by Mr. Hulcy as he has made it, one thing is certain, isn't it, Mr. Steinberger; that not a single acre of land definitely known to be non-gas-bearing will have been eliminated?

A. Well, Mr. Fitzhugh, you are asking me about two different classifications. This exhibit here has nothing whatever to do with exhibits sponsored by Mr. Hulcy.

Q. I am asking if a combination of your exhibit with that of Mr. Hulcy does not represent a value being found that included in the rate base for every acre of land that the company has any lease or fee ownership in?

A. I don't know, Mr. Fitzhugh. Mr. Dunn may have eliminated some acres which he figured would be written off in the next year. I am merely taking the acres furnished me by Mr. Dunn.

The Court: Mr. Fitzhugh, I believe the statement was made that they would show methods used by others. I understand that this witness was not expected to give that testimony.

Mr. Griffith: With this qualification, Your Honor: that this is as of January 1, 1933, and, as stated by the witness, there have been some few changes since that time.

The Court: I understand.

Q. Well, then, what responsibility are you assuming in [fols. 539-541] introducing this exhibit?—are you simply taking some data off the books?

A. I am assuming the responsibility of compiling this report on information furnished me by Mr. Dunn on acreage for which he did not calculate any reserve, taking the figures off the books representing the out-of-pocket expense to the company for these leases or parts thereof.

Q. So all you have done, then, is to make the compilation?

A. The compilation, yes, sir, of the various data furnished me.

Q. And you have not exercised any judgment of your own as to what acreage should or should not have been included?

A. No, I have not. It was furnished me by Mr. Dunn as part of his work.

[fol. 542] D. A. HULCY, recalled for further cross-examination, testified as follows:

Cross-examination.

Questions by Mr. Fitzhugh:

Q. Mr. Huley, turn to the second page of your Exhibit 31, that exhibit being your appraisal of gas reserves.

A. Yes, sir; it is.

Q. The first figure shown at the top of that page is a figure in the amount of \$19,451,614, the Estimated Gross Withdrawal Value?

A. That is correct.

Q. Now, that figure is the Total figure shown in the right-[fol. 543] hand column on page 3, is it not?

A. That is correct.

Q. And page 3 represents a detail of the computations in getting that figure?

A. That is correct.

Q. Now, that nineteen million dollars value that you have found for gas reserves represents, does it not, the computation of the present value of future withdrawals of gas at a price in excess of the field price now prevailing in the various fields?

A. Only in so far as it pertains to the Shamrock Field. The remainder of the fields are calculated at the present field price. I believe I made an explanation in connection with the Petrolia Field. With the exception of those two, that is the price actually being paid in the several fields.

Q. The Wheeler County Field shows up on page 3, as Panhandle?

A. That is correct.

Q. Does it not?

A. That is correct.

Q. And the value given to that is ninety-nine hundred thousand plus, or almost half of your total value?

A. That is correct; that is, the gross withdrawal value; of course, the large percentage of the reserves are found in that field.

Q. The total figure in thousands of cubic feet in the [fol. 544] column under Gas Reserves for the Panhandle Field is the figure that was given you by Mr. Dunn and Mr. Kendrick?

A. That is correct, yes, sir.

Q. Now, at what rate did you figure those reserves would be withdrawn?

A. The entire reserves are calculated that they would be withdrawn over a twenty-year period.

Q. Well, in twenty equal annual withdrawals?

A. No, sir; it was not calculated in that manner—that it would be over a twenty-year period.

Q. What is your withdrawal rate, then?

A. I don't know just what the withdrawals were for 1933.

Q. I mean, what is your computed withdrawal rate—the one that you have figured on in deciding that twenty years would be required to use up this much gas?

A. Well, I have not made any annual computed withdrawal rate. I assumed that it would be withdrawn over a period of twenty years—that the average would be ten years.

Q. This much is clear: you have this much gas now?

A. That is correct.

Q. All right. Now, for the year 1935, say, how much of that gas is going to be used up?

A. I could not tell you; and I have not made any calculations on that basis.

Q. Could you tell for 1936?

A. No, sir; I could not; I have not attempted to.

[fol. 545] Q. You could not tell for any single year?

A. No, sir; I could not.

Q. But you know that in twenty years it will be all used up?

A. That is the basis of my calculations, based on information furnished by Mr. Dunn; he is largely responsible for the twenty-year period; I don't claim any credit for that.

Q. And you don't have any factual basis at all for the assumption of the twenty-year life?

A. No, sir; that is largely based on Mr. Dunn's judgment in the matter.

Q. That is a purely arbitrary figure?

A. I would not say that is a purely arbitrary figure. I am sure that Mr. Dunn has given considerable thought to that. He mentioned several things the other day from the stand that would have to do with the withdrawal of reserves, and in the light of those matters it appears to me that a twenty-year period is entirely reasonable.

Q. Maybe we can get at it this way, Mr. Huley: If you divide your total figure—your grand total figure of 367,362,084 M. C. F. by 20, you would get the annual consumption of this gas, assuming that it is consumed equally all the way through the life of the reserves?

A. Yes, sir; you are correct; if you will assume it will be withdrawn in equal annual amounts, then the total volume of gas divided by 20 would be the average annual withdrawal or recovery.

[fol. 546] Q. That would be approximately eighteen million M. C. F.?

A. That is correct—eighteen billion plus per annum.

Q. The actual consumption of your Company at the present time, or the actual production is considerably less than eighteen million per annum?

A. Yes, sir; I would say it is.

Q. About half of that?

A. I believe that is about the figure Mr. Dunn quoted the other day.

Q. So if you had taken the actual figure that represents the present production per annum, your gas reserves would have been lengthened out to about a forty-year life?

A. If you would assume that the withdrawals would be limited to nine or ten billion a year, then there is not any question but that it would be over a period of approximately forty years.

Q. And since you did not take a forty-year life, but took a twenty-year life, doesn't that show that you have assumed increasing withdrawals per year throughout the life of the reserves?

A. Yes, sir; it has been calculated that the withdrawals will be in excess for future years over the amount being presently withdrawn.

Q. Going back to the Panhandle Field, why can't you tell the amount of estimated withdrawals for 1936, and so on down to the end of the life of that reserve?

A. Mr. Huley, that would naturally be a matter of estimate [fol. 547] and would be almost impossible for anyone to calculate the actual amount of gas that would be withdrawn from a particular field for a particular year. I felt that it would be reasonable to assume, and perhaps be just as accurate to withdraw the gas over a twenty-year period, and thereby get away from making estimates for withdrawals for any particular year in the future.

Q. When you testified before the Railroad Commission and introduced an exhibit before the Railroad Commission finding the value of gas reserves—

A. Yes, sir.

Q. —You did estimate the withdrawals by years, didn't you?

A. I didn't estimate them, Mr. Fitzhugh. Those withdrawals were taken from a schedule set out in the Dunn and Kendrick Report.

Q. But your exhibit included a precise amount of gas to be withdrawn from each field each year?

A. Yes, sir; it did.

Q. And you do not have that in this one?

A. No, sir.

Q. Why did you estimate it in one and not in the other?

A. Well, as I stated a while ago, I felt it would be entirely reasonable to make it on an average of ten years, or over a twenty-year period, for the main reason that it is impossible to forecast or predict conditions as they will [fol. 548] happen from year to year over a twenty-year period, but that it would be much more reasonable to assume that these things would happen during that entire period, and not being restricted to any one particular or individual year.

Q. The way you have this figured, Mr. Huley, wouldn't your Company have to be taking four times as much gas at the end of the twenty years in order for your computation to work out as they are now taking at the present time.

A. Well, as I understood the figure that Mr. Dunn quoted the other day, that at the present time we were producing approximately nine billion feet of gas per annum. If that continued for a period of ten years, naturally in the last ten years it would be necessary to withdraw gas considerably in excess of that amount, and it might be that in some of those years it would be necessary to withdraw as much as four times the present withdrawals.

Q. That is, if you continued taking gas at the nine million rate for ten years, you would have used up ninety million?

A. That is correct.

Q. And leave two hundred and seventy million to be used in the remaining ten years?

A. Approximately two hundred and seventy million.

Q. Or at the rate of twenty-seven million per year for the last ten?

A. Or about three times that amount being presently withdrawn.

Q. Now, back to page 2, what is the figure that you show [fol. 549] for your Worth Factor, and how did you get it?

A. .46319 is the Present Worth Factor used by me, and that is the factor for a ten-year period at an eight per cent discount rate; or, as previously explained, that is the present worth of a dollar which will be received ten years from date at eight per cent compound interest.

Q. Does this present worth factor represent an average?

A. No, sir; it is a ten-year factor, but which is an average of the twenty years.

Q. Now, then, suppose, Mr. Hulley, that the withdrawals occur at the rate of nine million cubic feet for the first ten years, and at the rate of twenty-seven million for the last ten years, so as to completely use up your reserves at the end of twenty years what would be the average life of your gas reserves?

A. You are assuming that ninety billion will be withdrawn during the first ten-year period, and the remainder of it will be withdrawn during the remaining ten-year period, or in round figures we would have two hundred and seventy-seven billion during the last ten years, and ninety billion during the first ten years; is that the basis upon which you want me to make the calculations?

A. Yes, sir.

[fol. 550] A. Well, to get it actually, Mr. Fitzhugh, of course, we would have to figure out the average of each of those. I would say in round figures that the average life there would work out on my basis about fifteen years; and in that case the eight per cent discount factor would be approximately .31524.

Q. Instead of .46319 which you used?

A. That is correct; yes, sir.

Q. And using the present worth factor, what would be the value of your leaseholds, approximately?

A. Will round figures do?

Q. Yes, sir.

Mr. Griffith: I assume he means developed gas reserves.

A. You have particular reference to the net figure that I show compared with the two million eight hundred thousand?

Q. Yes. I want a figure comparable with the figure shown on page 2 of your exhibit.

A. In round figures, Mr. Fitzhugh, by using a compound discount factor of .31524 rather than the figure of .46319, the present fair value of reserves, calculated in that manner, would be approximately three hundred thousand dollars.

Q. Instead of the two million six hundred and eighty-one thousand plus?

A. That is correct.

Q. In other words, as you assume a longer life, or as you assume withdrawals in increased amounts during the latter [fol. 551] years of the life of the gas reserves, you tend to get a lower present fair value of net gas reserves?

A. That is quite true, Mr. Fitzhugh. The larger the percentage of gas reserves that are withdrawn at a longer or a further date or a future period, naturally that does require the application of a lower factor, and when that factor is applied to the gross withdrawal values, less the cost of the future years, that does give you a smaller amount for the present fair worth.

Q. And, conversely, if you can assume a rapidly increased use of gas in the near years at a shorter life, you get a much higher value?

A. That is correct.

Q. So it is to your interest, in trying to get as high a value as possible upon your gas reserves, to assume as short a life as possible?

A. Well, as to that, I would say yes. That is what we have been primarily interested in, in arriving at a figure that would show present fair value of net gas reserves.

Q. In the testimony given before the Railroad Commission, where you worked out your valuation using a compound discount factor by years and where you gave the detail of the use of your discount factor, your factor there on an average worked out to be about .350 something?

A. What particular field do you have reference to, Mr. Fitzhugh?

Q. Well, Wheeler County.

A. The factor used was approximately .368.

[fol. 552] Mr. Griffith: For Wheeler County?

A. That is correct.

Q. That discount factor would mean that you assume about a fifteen year average life, would it not?

A. No, sir; that is approximately a thirteen year average life.

Q. Instead of the ten years used here?

A. That is correct.

Q. What is the prevailing field price in the Panhandle field of Texas?

A. Now, do you have particular reference to the Panhandle field as referred to in this report?

Q. Yes.

A. Or to Wheeler County?

Q. Wheeler County.

A. The prevailing price paid by the Lone Star presently is two cents per thousand cubic feet.

Q. How long has that been the prevailing price in that field?

A. Since the company started operations there, I believe.

Q. How long has that been?

A. I would say 1926 or 1927.

Q. There are quite a number of companies that take gas from the Wheeler County field?

A. Not so many, I believe, from the Wheeler County field. Perhaps two or three, Mr. Fitzhugh.

Q. What others take gas from that field?

A. The Northern Texas Utilities Company takes some gas from that field. However, if I remember correctly, most of the gas removed by them or withdrawn by them [fol. 553] from that field is their own gas. Now, I believe a Kansas City line, the Cities Service Gas Company, takes some gas from the Wheeler County field.

Q. Are there any other large takers of gas?

A. No. I believe I was mistaken about the Cities Service Gas Company; it seems that that is just a small line going out of the field, a six inch line, shown on the map as Public Service Corporation. Now, I don't know just where that

gas goes. So the major withdrawals from the Wheeler County field, I would say, are by the Lone Star Gas Company and the Northern Texas Utilities Company.

Q. This last company you talk about is the Public Service Corporation of Texas that serves Canadian and some other towns up there?

A. I think that is correct.

Q. And it is not very large?

A. No, I would say it would not be classified as a major pipe line.

Q. It is a fact, is it not, Mr. Hulcy, that all of these companies besides yours that buy gas from other owners in the Wheeler County district are paying the two cent field price?

A. Well, where natural gas is sold as such, yes, that is my understanding.

Q. Where you pay a royalty, those payments are always calculated on a two cent price, aren't they?

A. That is correct.

[fol. 554] Q. And in the matter of making out your gross production tax reports, those are made on the basis of the two cent field price?

A. Well, I have not seen the reports, but I am sure that they are, Mr. Fitzhugh, because that is the posted field price at the present time.

Q. I show you a photostat of a report made by your company to the State Comptroller for the purpose of making your tax payment. You are familiar with Mr. Cobbs' signature, are you not?

A. Yes, sir; I am.

Q. You can tell that that is a copy of the report?

A. Yes; that seems to be a copy of Mr. Cobbs' signature.

Q. Now, look at this back sheet, please, sir, and see if you can not tell that these tax payments are made on the basis of a two cent price for the Wheeler County field?

A. That is correct. The production or the total volume seems to be calculated at a price of two cents in arriving at the gross tax.

Q. When you make gas purchase contracts, where you contract to take gas from private individuals, how long a term do those contracts usually run?

A. In some fields the contracts are made for the life of the lease. In the Panhandle field almost always those con-

tracts have been made for the duration of one year and not in excess of two years. It was not possible to secure contracts for a longer period of time. The contracts extend [fol. 555] until either party gives notice of the cancellation.

Q. How many contracts that the company now has for gas purchases in the Wheeler County area are two-year contracts?

A. I could not tell you, Mr. Fitzhugh, without making an examination of the record, but it is my general understanding that most of the contracts in the Wheeler County area are for either one or two years period.

Q. Well, they make more two-year contracts than they do for one year, don't they?

A. Well, sir, that would be merely a guess on my part.

Q. And they make some for longer than two years?

A. I don't know of any contracts in the Panhandle that have been made for a longer period of time.

Q. Are the contracts of the kind now used by the company renewable on any certain basis?

A. My understanding is, Mr. Fitzhugh, that those contracts are automatically renewed or carried on until such time that either party elects to cancel upon a certain amount of notice.

Q. So that the contracts that the company now has would be extended on the basis of the two cent price?

A. Until such time that either party elected to cancel. Almost all of the contracts in the Panhandle area at this time are subject to cancellation upon receiving notice from the producer of gas.

Q. Some of the contracts that you refer to would run during the years 1935 and 1936?

[fol. 556] A. Well, I don't know that they would—that is, by their own terms. I think the majority of the contracts in the Wheeler County area have been in existence for a period of three or four years, and some of them in excess of that.

Q. Well, any contracts that your company is renewing at the present time would run into 1936, would they not?

A. No; I don't think those contracts are renewed, Mr. Fitzhugh. They automatically are renewed after the expiration of the contract period, but then they are subject to cancellation upon a reasonable amount of notice. I have forgotten whether that notice requirement is three months

or six months, but I would venture to say that at least ninety-five per cent of the contracts held by the company at this time in the Wheeler County district for the purchase of natural gas from independent producers, if they so elected, would be subject to cancellation within a period of three to six months.

Q. Well, now, your company makes some new contracts occasionally?

A. Yes, I am sure there are a few new contracts made.

Q. In the case of new contracts, they would run into 1936?

A. If a contract were made now for a period of two years, it would run over into 1936.

Q. All right. Now, then, in testifying before the Commission, where you predicted in detail the prices that would prevail in the various fields, your exhibits there showed that in 1935 and 1936 there would be a fifty per cent increase in the cost of gas in the Wheeler County district?

[fol. 557] A. Yes, sir, that the price would increase from two cents to three cents per thousand cubic feet.

Q. As a matter of fact there is no such increase in sight at this time?

A. Well, I would not say that, Mr. Fitzhugh. I would not be surprised if such an increase would be in effect in 1935. I think everyone is familiar with the conditions as they exist in the Panhandle field, and undoubtedly some kind of solution is going to have to be worked out to take care of things.

Q. Well, Mr. Huley, your company certainly has contracts in effect at this time that will protect it against a raise in price in 1935?

A. No, sir. I would say that ninety-five per cent of the contracts held by the company in the Shamrock field could be canceled out by the producers between now and the first of 1935, and some of those contracts have been canceled out.

Q. What is your present prediction, Mr. Huley, as to the time when a rise in price in the Panhandle gas field will occur?

A. According to the calculations I made and used in this exhibit, I still felt that my earlier prediction was true,

and I have used the same periods of time—that is, that in 1935 and 1936 there will be an average price of three cents per thousand cubic feet.

Q. And you still assume that there will be a fifty per cent increase in the price of the gas in Wheeler County?

[fol. 558] A. Yes. Taking the figures read a while ago, I anticipate that an average price of four and seven-tenths cents for the life of the field would be entirely reasonable.

Q. And do you still believe that by 1934 the price of gas will have been doubled in the Wheeler County field?

A. 1934?

Q. 1938, I mean.

A. That the price will be four cents?

Q. Yes.

A. I would say, Mr. Fitzhugh, that that appears to me as being entirely reasonable. Naturally, it is an assumption and a projection.

[fol. 559] Q. And by 1944 you assume, for the purposes of your exhibit, that your Company will be paying three times as much for gas as it now currently pays?

A. Now, you have particular reference to the Panhandle Field?

Q. Yes, sir.

A. Yes, sir, by the year 1944 that the average field price paid by the Company will be six cents per thousand cubic feet.

Q. So that, while your exhibit is not in the same detail, you have made the same basic assumptions for the Wheeler County area?

A. So far as the cost of gas is concerned, yes, or the price of gas.

Q. And the price that you use in this exhibit for gas in Wheeler County is 4.7 cents per thousand—

A. That is correct.

Q. —instead of the prevailing two-cent price?

A. That is correct.

Q. In other words, if you had used in your valuation of the Panhandle Gas Reserves the price that is now actually being paid, you would have gotten a figure a little less than half the value shown in your exhibit?

A. Yes, sir, for the gross value I would have had an amount of approximately \$4,200,000.00, as compared with \$9,900,000.00 as gross withdrawal values.

Q. Mr. Huley, what was to keep you from just applying ten or twelve or fifteen cent gas in your computations? [fol. 560] There isn't a thing in the world, is there?

A. That could have been done, Mr. Fitzhugh, if you had been so inclined and wanted to make a report of that kind. What I was striving to do was to make a report that would show the minimum present fair value of the gas reserves *under* by Lone Star Gas Company, and that is what I have attempted to do.

Q. Mr. Huley, what has been the trend of gas prices in Texas in the last twelve or fifteen years?

A. Now, are you talking about Texas as a whole?

Q. Yes, sir.

A. Or are you talking about particular fields?

Q. Over all. Isn't it true that it has been consistently downward.

A. That applies only, as far as I know, Mr. Fitzhugh, to the Shamrock or Panhandle Field; the prices in the other fields have been largely the same or have increased.

Q. Well, isn't it generally true of the Texas Fields—just taking all the Texas fields, in general, isn't it true that the trend of prices in the Texas fields has been steadily downward—

A. No; no—

Q. —for the past ten years?

A. No, I wouldn't say that at all, Mr. Fitzhugh,—I wouldn't say that at all. We are offering the same price for gas in the West Texas area that we have been paying [fol. 561] for a number of years.

Q. What fields are you talking about?

A. I am talking about the entire West Texas fields—Stephens County, Shackelford County, Eastland County, and Palo Pinto County. I might add that on the large volumes of gas received by the Lone Star Gas Company from the West Texas Field that the price has increased. I have particular reference now to the gas purchased from the natural gasoline plants, which have amounted to a minimum of ten billion cubic feet per annum, which was in the last year, to a maximum of at least fifteen to seventeen billion cubic feet of gas. Originally, the purchase price was about two or two and one-half cents; it is now and has been for some time six cents per thousand cubic feet; so the trend of the price for large volumes of gas has been decidedly upward.

Q. What are the fields shown on page 3, that you call the West Texas Fields?

A. The Leeray Field, Sipe Springs Field, the Cheaney Field, and the miscellaneous wells.

Q. Now, do I understand you to say, Mr. Huley, that in all those fields the prevailing price is six cents?

A. That is correct.

Q. How long has that field price prevailed?

A. I would say that the field price of gas purchased at the well-head has been six cents almost ever since we have [fol. 562] been operating in that field.

Q. And how many fields is that?

A. The lines were extended and the larger volumes of gas were purchased from counties,—that is, farther distant than Palo Pinto County, I believe in about 1924.

Q. Are there any fields that you operate in now, Mr. Huley, where the prevailing field price has been raised since you started operations?

A. I don't know what I can recall just now, Mr. Fitzhugh. I am reasonably sure that there have been some increases, but I would have to make an examination of the records before I could tell you that. As I just mentioned, that is, the largest volume of gas that has been purchased by the Lone Star Gas Company at any time was the gas purchased in the West Texas area from the casing-head gasoline plants, and that field price increased three times over, from two cents per thousand to a price of six cents per thousand.

Q. Now, you are talking about casing-head plants?

A. Yes, sir, I am.

Q. Now, how about the well owners—have there been any increases in the price of gas at the well-head?

A. Well, sir, I would have to check the record before I could tell you, Mr. Fitzhugh.

Q. As a matter of fact, in the fields where you now are paying six cents haven't you in the past paid ten—

A. No, sir.

Q. —in some instances?

[fol. 563] A. No, sir, I don't recall anything like that.

Q. In Leeray, Sipe Springs, Cheaney, and the miscellaneous fields of Texas, does your Company pay royalty owners on the basis of six cents?

A. I understand that they do, yes, sir.

Q. Are there any other companies operating in these fields?

A. I think perhaps there are some smaller companies operating there, Mr. Fitzhugh. I don't believe there are any other major pipe lines coming out of those particular fields.

Q. Do those other companies pay the same prevailing field price of six cents?

A. I am not in position to say. I don't know. I haven't made any check of them. It is my understand- that six cents is the prevailing field price that is paid by anyone who purchases gas in that field.

Q. Is that the price paid by the gasoline plants?

A. No, sir, the gasoline plants they don't purchase gas on a basis of cost per thousand cubic feet; it is on a royalty basis of the gasoline produced.

Q. Well, isn't the royalty basis worked out on some basis of the amount consumed for gas?

A. No, sir, it is not.

Q. It is not?

A. No, sir, it is based on the recovery and sale price of gasoline plus the sale price of such residue gas as is available [fol. 564] able to be sold.

Q. How did you work out your unit value for the Petrolia Field gas?

A. Ten cents per thousand cubic feet is the withdrawal value which was arrived at in placing a value on the gas reserves in that field as at March 1, 1913, for Federal income tax purposes, and since that date has been used in making all calculations that have been made for that particular field. You understand that most all of the gas in the Petrolia Field is owned, we might say, in fee by the Lone Star Gas Company.

Q. Well, you purchase some gas, don't you?

A. Not in the Petrolia Field proper.

Q. Where is the Ray Dawson well?

A. The Ray Dawson wells were located, as I remember now, south and east of the Petrolia compressor station.

Q. How far is that out of the Petrolia Field proper?

A. Oh, I would say, roughly,—not having a map here available—three and one-half to four miles.

Q. And in purchases made from those wells your Company pays royalty on a basis of six cents, doesn't it?

A. I believe both royalty and the cost of gas—that is,

at six cents. They are not owned by the Company, those wells are not.

Q. Are there any other wells in that immediate section where you make purchases, besides from the Ray Dawson wells?

A. The only wells that I recall at this time which are [fol. 565] Company-owned wells, but where there is a royalty interest, is the N. H. Martin farm. Now, that is the only purchase that I recall at this time.

Q. So, as far as you know, there is only the Dawson well that you might say is in that neighborhood where you make purchases?

A. That is right.

Q. And you make those purchases at six cents?

A. Not at the present time. Those wells, if I remember correctly, we discontinued the taking of gas from those wells at all in March of 1933, I believe. That, as I remember now, was the last gas that was purchased from those wells.

Q. Mr. Huley, isn't six cents really a fair price to place upon the Petrolia Field gas?

A. No, I feel that ten cents is entirely a fair price, Mr. Fitzhugh; and I say that for this reason, that perhaps more time, we will say, by experts was given to the placing of a value—of a fair value, on the Petrolia Field gas than perhaps has ever been given to any other field in this section of the country, and it was not a one-sided affair; that was handled by engineers for the Company, as well as engineers for the Department of Internal Revenue; it was necessary that the value as of March 1, 1913, be placed on the Petrolia Field, and they did arrive at and use a price of ten cents per thousand [fol. 566] sand cubic feet as the withdrawal price of that gas; and in view of that—that it did receive such a detailed study and finding, I have been perfectly satisfied to use a price of ten cents a thousand cubic feet.

Q. That study was made before the Wheeler County Field came in—

A. Yes, sir, it was.

Q. —and before that was any two-cent gas in the Texas Panhandle?

A. That is correct.

Q. And before all those independent operators were up there crying for somebody to take their gas away from them at any price?

589

A. If they were crying, yes, it was.

Q. So you are going to insist at the present time that six cents would not be a fair price to put on the Petrolia Field gas?

A. Well, I will tell you, Mr. Fitzhugh, I don't know on the Petrolia Field whether it would make a great deal of difference whether it was six cents or whether it was ten cents. I don't know whether you are exactly familiar—that is, with the way that I have worked up this report, and just what it is purported to cover, and what the final answer is on the Petrolia Field. Included in the net value of gas reserves, as found by me in the amount of \$2,600,000.00 plus, which is [fol. 567] based upon the gross withdrawal value—that is, plus cost of recovery, and those amounts discounted by the use of the present worth factor, that the deduction of the production equipment—that is, gas well equipment and construction applying to the Petrolia Field, I have a negative value of in excess of \$400,000.00 for the Petrolia Field; or, in other words, if I had eliminated the Petrolia Field from the investment, or from the calculations made by me, this amount of \$2,600,000.00 would have been between four and five hundred thousand dollars in excess of what I have shown.

Q. Well, if I understand you, if you had figured out the Petrolia Field on about the same basis as you did the other fields, you would have found it worth less than nothing,—is that it?

A. So far as present value of net gas reserves are concerned; and I have, as I said a while ago, I have placed a negative value of between four and five hundred thousand dollars on the Petrolia Field; or, if I had left it out altogether, this figure of \$2,600,000.00 would have been in excess of three millions of dollars; but it is a property owned and operated by the Lone Star Gas Company as of January 1, 1933, and I have included every producing property owned by them at that date.

Q. Anything that you cut out, though, Mr. Huley, in arriving at your figures was placed right back in again when Mr. Biddison came to his figures, isn't that right?

[fol. 568] A. I have deducted the total amount used by Mr. Biddison. Now, then, in order that we might show—

Q. Just answer my question. Now, didn't Mr. Biddison put back in everything you eliminated?

A. No, sir, Mr. Biddison put it in originally; I am the one who eliminated it. He had it in there originally.

Q. Well, whichever one did the eliminating, it is in there twice, isn't it?

A. No, it is not in there twice. Now, let me explain this, Mr. Fitzhugh,—looking at it from the way it appears in both reports, of course, Mr. Biddison does have a value on the gas well equipment and construction for the Petrolia Field of \$424,398.00, and by the use of the 22.1 per cent of the overheads applicable to the direct cost, there has been included in the overheads used by me an amount of \$93,792.00, making a total of \$518,190.00, appearing in his report, which has been deducted by me. Now, then, the net value in both appraisals—that is, by the picking up of the figures developed by me, for gas well—that is, for gas reserves, plus the total of the gas well equipment and gas well construction for the Petrolia Field, is \$60,204.00 for the whole amount, equipment, construction and gas reserves; and then the actual amount included is less than that, for this reason, that I deducted for the overheads on gas well equipment and [fol. 569] construction a percentage figure of 22.1 per cent. The actual overhead figure used in the Steinberger-Biddison-Connor appraisal is 20½ per cent, or the actual net amount included in the total appraisal for the total of the Petrolia Field—that is, gas reserves, gas well equipment, and gas well construction, is \$53,413.00.

Q. So from your explanation, I take it, Mr. Huley, that if you had used six cents as the price of gas in the Petrolia Field you would have found no value for the Petrolia reserve in either appraisal?

A. Well, no, I wouldn't say that, Mr. Fitzhugh. The amount found would have been less.

Q. Well, it would have been practically nothing, wouldn't it?

A. No, for this reason, it would be bound to be something. At 1,877,000,000 cubic feet of gas calculated at a price of six cents would be in excess of \$100,000.00; so I would say that there would be some small worth. However, it would be materially less than that and a very small amount.

Q. That is, materially less than \$53,000.00?

A. That is correct.

[fol. 570] Q. That has not taken into account, though, the cost of operating the field and collecting that gas, has it?

A. Yes, it has. It has this amount of operations that have been allocated.

Q. Well, the \$100,000.00 figure you speak of, wouldn't that be after deductions for labor?

A. No, sir; that is the gross amount. That is the gross withdrawal value; that is the total value that has been placed on the Petrolia gas well equipment, gas well construction and gas reserves.

Q. But you are going to keep it your testimony, are you Mr. Huley, that the only way fairness can be done for your company is to place a ten cent price on this gas for the Petrolia field?

A. I feel that the gas reserves withdrawn from the Petrolia field that ten cents is a fair and a reasonable price.

Q. Are you aware of the fact, Mr. Huley, that your company in its tax reports to the State of Texas, claims that the gas in the Petrolia field is only worth six cents?

A. No, sir.

Q. Would you be interested in seeing a photostatic copy of a report made by your company?

A. I don't know that I would be particularly interested in it.

Q. I don't imagine you would either, since it is so much at variance.

A. Well, this does not exactly check with a six cents price, Mr. Fitzhugh, according to my division.

[fol. 571] Q. For Clay County?

A. No, sir, Clay County, Texas, shows a volume of 78,584,000 cubic feet, and the value at \$4,921.98, which would be an average price of 6.28 cents per thousand cubic feet, or something in excess of six cents per thousand cubic feet.

Q. About six and a quarter cents?

A. In round figures, yes.

Q. And hasn't your company been making its tax reports on that basis for some years?

A. I don't know, Mr. Fitzhugh; I have not seen those tax reports and I am not familiar with them.

Q. This much is certain, isn't it, Mr. Huley, that either your company has been defrauding the State on its basis for gas prices used on these reports, or else your value is too high?

A. No, sir, I wouldn't say that. I have placed a value on this gas that I find and feel to be reasonable. Now then, I would not say there would be no difference between the

Petrolia field—that is, by me using a price of ten cents per thousand cubic feet and the reports being made at six cents, any more than in the Panhandle field, where the basis of the reports to the Comptroller is two cents per thousand cubic feet for that gas and the price I have used is in excess of four cents per thousand cubic feet; and I think it is a fair and reasonable value that I have placed on those gas reserves.

Q. Well that is just one more instance of the same thing, or another inconsistency, isn't it?

[fol. 572] A. No, sir; I think the gas reserves value I have used is quite fair and reasonable.

Q. What consideration did you give to the reserves in the Miller farm lease?

A. I don't know anything about that Miller farm lease, Mr. Fitzhugh. The only information I have is that which Mr. Dunn sets out in his report of which he furnished me a copy, and said that the net gas reserves from the entire Petrolia field is shown to be a total of 1,877,058,000 cubic feet of gas, and that is the figure I have used and I am not familiar with how that item was made up.

Q. Well, you are aware of the fact that that figure as testified to by Mr. Dunn, does include the gas stored on the Miller lease, aren't you?

A. It doesn't include storage gas; no, it does not. The entire storage gas is handled through a storage account, just as any other account is handled. It is charged to a gas storage account, and as gas is removed from there it is credited to the account, and that is strictly an accounting problem and an accounting matter, but it is not handled as a production.

Q. The gas stored on the Miller lease is Oklahoma gas, isn't it?

A. That is my understanding that it is, yes.

Q. That is, it is gas that comes out of Line H or Second H?

A. I believe out of Line H or Second H, and I believe from the Chickasha field.

Q. What is the prevailing field price for gas in the Chickasha field of Oklahoma?

[fol. 573] A. Eight cents per thousand cubic feet.

Q. And do you pay a royalty on that basis?

A. Yes, we do.

Q. How about the Duncan field?

A. Ten cents per thousand cubic feet.

Q. Do you pay royalty to other owners on that same basis?

A. Yes.

Q. How about the Loco field?

A. The Loco field has a price of six cents per thousand cubic feet.

Q. Do other gas operators in the same field pay the same price in these different fields?

A. I am sure they do, Mr. Fitzhugh. No, I do know about the Chickasha district that the Oklahoma Natural Gas Corporation did pay at one time a price of ten cents per thousand cubic feet, but I am not sure what they are paying now, but I believe it is a price comparable to the amount paid by the Lone Star Gas Company.

Q. Does that company operate in the Duncan or the Chickasha field?

A. They operate in the Chickasha field; they may have a line in some portions of the Duncan field; but I do not recall right at this time.

Q. In general, though, would you say, Mr. Huley, that your company and the other companies get about the same price—or pay the same price in these various fields?

A. I would say that the field price is generally followed, [fol. 574] particularly by the major companies that remove or withdraw any sizable amounts of gas.

Q. In testifying before the Railroad Commission before, Mr. Huley, you made the statement that "We are assuming that our own gas reserves are worth exactly the same or that the gas produced by the company in any field is really worth exactly the same as that gas purchased from any other producer; it is worth that much and no more, and we have gone about it on that assumption." Do you remember that?

A. Yes, I remember that quite well.

Q. Do you still subscribe to that?

A. Yes, I do, and particularly in the calculation of a report of this kind. I believe an assumption along those lines results in minimum values that could be placed on gas reserves. Those are the prices being paid to miscellaneous independent scattered groups of gas properties. Naturally I feel that the worth of a gas reserve from large blocks of leaseholds which are owned by the company and subject to their control as long as the lease or the well shall last does

have a value in excess of the price paid to small scattered groups of wells and leases. However that same price paid to them is the price used by me in making this calculation, with the exception of the Panhandle field, and the explanation I made in connection with the Petrolia field.

Q. You could hardly call the Panhandle field very scattered, as to gas reserves?

A. Well; so far as the independent producers that we take [fol. 575] gas from, yes. It is not as compact as the company owned leases and the company owned wells; the contracts are of a short period of time on those wells, and of course on the wells owned by the Lone Star Gas Company, that is equivalent to a contract of the life of the lease rather than being limited to a period of one or two years.

Q. Have you assumed, in line with Mr. Dunn's testimony, that the Petrolia field would be abandoned when it dropped down to about 100,000 cubic feet production per day?

A. Well, I really have not gone into that matter, Mr. Fitzhugh. It was not necessary for me to do so. Mr. Dunn had arrived at a net gas reserve figure for the Petrolia field, and that was used by me. Also, on the average life of ten years or the withdrawal period, it was calculated at the same period as the Panhandle, but of course we all know that the Petrolia district, more than likely, will be abandoned quite a bit earlier than the Panhandle field, but it has just been treated as a part of the gas reserves developed by Mr. Dunn and has had no special treatment from me at all.

Q. You remember, do you not, that Mr. Dunn said it was very uncertain when the Abandonment of the Petrolia field would take place? It would be a matter of policy?

A. Mr. Fitzhugh, I didn't hear all of Mr. Dunn's testimony, and he had been testifying all morning when I got into the court room.

Q. You know, don't you, that is the substance of his testimony?

[fol. 576] A. Well, I am afraid I couldn't say. I didn't hear it, you understand; but I am sure that there is some limit and when the production reaches that point the field will be abandoned. Just what that limit would be I don't know.

Q. But regardless of when that field will be abandoned, whether it be at the time when production drops to 100,000 cubic feet per day or at some other production point, you

Have assumed that the entire amount of gas present there will be recovered, haven't you?

A. Yes, whatever that amount is, I have assumed that 1,877,058,000 cubic feet will be recovered.

Q. And doesn't that fail to take into consideration the fact that the field will be abandoned probably before all that amount is recovered?

A. I don't know that I just understand, Mr. Fitzhugh. Will you read the question, please?

(Question is repeated.)

A. Well sir, I have not given any consideration whatever to the probability of the field being abandoned prior to the actual recovery of this volume of gas.

Q. You are familiar with Mr. Kendrick's and Mr. Dunn's exhibit introduced before the Commission, aren't you?

A. Yes, I saw it at that time.

Q. Now in this exhibit introduced before the Railroad Commission, Mr. Dunn assumed that when production had dropped down to 220,000 cubic feet per day in the Petrolia field, that the field would be abandoned. Now in this case, instead of assuming 220,000 to be the abandonment point, he chooses 100,000 cubic feet per day. Do you know why [fol. 577] that change in policy was made?

A. No, sir, I do not.

Q. Were you consulted on it any?

A. No, sir, I was not.

Q. So you claim no responsibility for that?

A. No, sir, I do not.

Q. Back to page 2 now, Mr. Huley. You show a cost of recovering or future developing costs, in the amount of \$2,658,619.00?

A. Yes, I do.

Q. How was that worked out?

A. The detail of that amount is shown on page 4. Mr. Dunn sets out in his report that it will be necessary to drill a certain number of wells in the future in order that the entire gas reserves calculated by him may be recovered. He estimates that it will be necessary to drill 86 additional wells in the Shamrock area. The direct cost or the average cost of the wells as included in the Steinberger-Biddison-Connor appraisal, plus the overheads, would amount to \$15,063.00 per well. 86 wells times the average cost determined per

well would be a total of \$1,295,418.00. Mr. Dunn also estimates that it will be necessary to drill 31 additional wells in the Leeray field and 18 additional wells in the Sipe Springs field, and the unit costs or the costs per well in each of those areas were determined to be \$30,991.00 and \$22,360.00 respectively, or the total cost of all future wells which will be necessary to be drilled in the amount of [fol. 578] \$2,658,619.00, and as stated, that is based on the findings set out by Mr. Dunn.

Q. What have you assumed was the average life of wells?

A. I have not made any assumption on average life of wells, other than the ten year average or that all these wells would be abandoned—these particular wells would be abandoned, at the end of a twenty year period.

Q. To get your final figure, Mr. Huley, you did apply your present worth factor, did you not?

A. Yes, which was a ten year period.

Q. And you assumed a ten year average on that?

A. Yes, that's right.

Q. So if you are wrong about ten years being the correct average life of wells, your figure would be thrown off to that extent, wouldn't it?

A. No sir, it would not, Mr. Fitzhugh. If the twenty year period is wrong, that they would be recovered over that period of time, then the present worth factor of course would not apply but that has nothing to do in particular with the ten year average for the life of wells. That would be governed more by the period of time required to remove and withdraw gas reserves.

Q. Now how did you work out your recovery operating costs, in the amount of \$1,237,661.00?

A. That is shown in detail on page 5. At January 1, 1933, the company owned and operated a total of 262 wells at that date, and based on the information shown on page 4 of this report, which is the information given or the amount [fol. 579] estimated by Mr. Dunn, there would be an additional 135 wells drilled during that period or making a total of 397 wells. I assumed that one-half, or in round figures, 200 of those wells would be in operation for the entire twenty-years period, and it has been estimated by me that the recovery costs will amount to \$200.00 per well per annum. That is, the estimated annual recovery cost would be an average of 200 wells per annum at a cost of \$200.00

per well or a total of \$40,000.00 per annum for recovery costs, and that the 20 years period would give a total recovery cost for the recovery period of \$800,000.00. Then in addition to that I have made a calculation to cover the gross production tax and an average rate of $2\frac{1}{4}$ per cent is used amounting to \$437,661.00 and the direct recovery cost plus the gross production tax gives a total of \$1,237,661.00 as total recovery costs.

Q. How did you find the \$200.00 figure you give as the estimated annual recovery cost?

A. That is based on the experience of the company. That was based largely on the actual figures for the year 1932. The average operating expense for that year was approximately \$160.00 per year, and I have used a flat round figure of \$200 per well, which I felt would be ample to cover all operating expenses over a long period of time and giving effect to average conditions.

Q. Was the \$160.00 figure that you just gave based on a study of all fields, or some particular field?

[fol. 580] A. No, sir, that was based on the total withdrawal expense as shown for the Lone Star Gas Company, divided by the total number of wells operated.

Q. What are your total figures on that?

A. The total operating expenses for the production department, that is, the withdrawal—or applying to the withdrawal of gas, was \$29,782.18; the ad valorem taxes applicable to the gas production properties was \$12,573.00, making a total of \$42,355.00 and I used an average of 260 wells; that amounts to \$163.00 per well.

Q. What allowance do those figures make for overheads?

A. They do not make any allowance for overheads. These are the direct operating expenses.

Q. Does the \$29,782.00 figure include the cost of cleaning out wells in 1932?

A. Yes, it does.

Q. Do you know what part of that cleaning out cost was for the Petrolia field?

A. No, sir, I do not, Mr. Fitzhugh. I do not have those figures broken down.

Q. What is that \$29,000.00 figure again?

A. It was \$29,782.18.

Q. And what all does that cover now?

A. The principal item is repairing and cleaning out wells, in the amount of \$23,771.22. The remainder of the charges,

being made up of the superintendence applicable to the pro-[fol. 581] duction of gas in the amount of \$4,424.28; direct labor, \$18.62; miscellaneous supplies and expenses, \$5.73; maintenance other than repairing and cleaning out, \$48.26; and the miscellaneous lifting expense of \$1,514.07, making a total of \$29,782.18.

Q. Do you have your Exhibit 13, Mr. Hulcy?

A. I don't have a copy of it.

Mr. Griffith: I have a copy here.

Q. Well, on page 6, for the twelve months ended December 31, 1932, you show in your deductions from gross revenues, production system expense in the amount of \$68,634.15?

A. Yes.

Q. Wouldn't that be a figure that ought to be a comparable figure for that same year with this \$29,000 figure you just gave us?

A. No, sir. It would not for the reason that one of the larger amounts included in the production system expense is the royalties paid on gas produced, and it will be noticed that in the preparation of this report it is based on net gas reserves—that is, the company's own proportion—that amount for 1932 was in excess of \$37,000.00, which is included in production system expense; so they are not comparable at all.

[fol. 582] Q. Mr. Hulcy, where you purchase gas from other owners, as you do up in Wheeler County, where you pay this two-cent field price, do you have to pay the owner of the gas anything besides that two cents per thousand cubic feet?

A. No, sir; I believe that is all we pay him.

Q. You don't have to pay him anything for the depletion of his well?

A. Of his well?

Q. Yes.

A. No, sir.

Q. You don't have to pay him for depreciation on his well equipment?

A. No, sir.

Q. If he had engaged in some unfortunate drilling before

you started making purchases from him and had hit some dry holes, you would not have to pay him for any of that, would you?

A. No, sir.

Q. If the other owner had had some expense similar to your cancelled and surrendered lease expense, you would not have to pay him any additional amount on account of that?

A. No, sir; we would pay him for the gas purchased from him at the current price.

Q. Now, your Company, besides asking for the full value of your gas reserves based on this well-head price, asked [fol. 583] also that an allowance be made in its rate for depreciation, depletion, dry hole expense, and cancelled and surrendered lease expense?

A. All of those things will be included, yes, in the cost of operations.

Q. You do not anywhere in this exhibit make any sort of compensation for payment of Federal income tax, do you?

A. No, sir; I do not.

Q. Why don't you?

A. It does not belong in here at all, as I see it.

Q. Don't these amounts that you expect to receive in future years for the consumption of your gas reserves represent income?

A. No, sir; they do not—merely the recovery of value—it does not represent income at all—the realization upon an asset owned by the Lone Star Gas Company as of January 1, 1933.

Q. If you didn't regard these accruals in future years as being actual income, what would be the use of using your discount factor?

A. I have not applied it as income at all. I say these assets will be recovered over a future period of years, and for that reason the discount factor has been applied; but at no place on the books of the Company ever will the gross withdrawal value shown by me appear as income.

Q. If you had regarded these amounts to be derived from [fol. 584] gas reserves through future years as income, and computed the Federal income tax from that deduction, you would have had a very much less value for your gas reserves, wouldn't you?

A. Yes; if I had deducted 13¾ per cent of the net amount, Mr. Fitzhugh, the amount would be less, there is no question about that.

Q. How much less would your gas reserves then be?

A. Now, you just want me to make the calculation?

Q. Yes.

A. Now, as I understand what you want, Mr. Fitzhugh, is if I had a Federal income tax rate of 13.75 per cent, as a part of the cost of recovery—had I done that, the calculated amount for the Federal income tax would have been approximately \$2,207,000.00 with the present worth factor applied.

Q. That is for the entire twenty-year period?

A. That is the total amount based on the \$16,055,292 shown as the Estimated Net Recovery Value of Gas Reserves. With the present Worth Factor applied to that, the reduction would have been one million dollars—that is a little less than one-half of the \$2,207,000.00. Then the value found for the gas reserves net upon that basis of calculation would be approximately \$1,600,000.00. However, of course, that would be entirely incorrect, for the reason that if you were going to prepare a Federal Income Tax return based upon these properties, naturally, this amount of \$4,754,000 depreciation would be suffered during [fol. 585] that period of time, and that amount would be included as a deduction. In addition to that, net amount found for the value of the reserves or leaseholds would be subject to depletion over the entire period, and that amount would also be allowed for deduction before the calculation for Federal income tax. These calculations I made for you are not correct at all and could not be assumed to be correct under any circumstances or conditions, for the reason that, naturally, depreciation and depletion allowances would be allowed.

Q. I believe you say in making up this exhibit you followed the valuation method similar to the methods you followed in making up income tax returns?

A. Prior to 1925. The depletion law was changed as of January 1, 1925, and what I have particular reference to was that section of the Act covering the discovery values placed upon oil and gas producing properties.

Q. The reports that you made to the Federal Government for income tax purposes for 1933 and the years prior to that are not available to us, are they?

A. Do you mean the depletion schedules?

Q. No, sir; the returns of the Lone Star Gas Company?

A. Of the Lone Star Gas Company?

Q. Yes, sir.

A. So far as I know, I suppose they are.

Q. Don't you know that those reports are not accessible to the public generally?

[fol. 586] A. Federal income tax matters?

Q. Yes.

A. I haven't ever heard about any auditor for the Railroad Commission making a request for them. I have just assumed, and gone on that assumption, that you have been afforded everything in connection with the Lone Star Gas Company's business that you asked for.

Q. Could we be furnished the originals of your report to the Federal Government for income tax purposes?

A. You mean the one filed with the Department?

Q. Yes.

A. I am not sure about that. They are out of our control.

Q. Well, can you furnish us with certified copies of the originals?

A. You are asking about something filed with the Federal Government, and which is entirely beyond our control.

The Court: Mr. Fitzhugh, you are asking him about something they filed with the Federal Government, and it would be purely a matter of conclusion and opinion on his part about what they would do. You could ask the Federal Government for them, or whether they are privileged or not, but don't ask this witness about that.

Mr. Fitzhugh: That is the point: We can't get them.

The Court: If you can't get them because of the Federal law in regard to them, why embarrass this witness about it?

[fol. 587] Mr. Stout: That is the point. We think we are right—

The Court: About what?

Mr. Stout: About proving by him that the reports are privileged. There is some controversy about what those reports show.

The Court: Well, ask him about whether they are privileged or not, if you want to.

Q. Well, are those reports privileged, Mr. Hulcy?

A. Now, you have reference to the reports held by the Department of Internal Revenue?

Q. Yes.

A. I don't believe they are at this time, Mr. Fitzhugh. There was one time when these reports were privileged and subject to inspection, but I don't believe that is the law right now. However, I have not kept up with that, and I may be mistaken about it.

Q. When was the law with respect to that changed?

A. I couldn't tell you now; I don't recall.

Q. But you are fairly certain that it has been changed?

A. That is my impression. As I say, I have not had any occasion to make an examination or request to be allowed to examine any Federal income tax returns filed by other concerns, and for that reason I don't know anything about that.

Q. About what time did this change become effective? [fol. 588] A. I couldn't tell you, Mr. Fitzhugh; it would be merely a wild guess on my part.

Q. Mr. Huley, when you testified before the Railroad Commission in explaining your exhibit similar to the one introduced here, and where you used the same general method—

A. Yes, sir.

Q. —you assumed for 1933 there would be used up of the gas reserves of the Company 12,114,418 M.C.F., did you not?

A. I didn't make that assumption. I used that figure, but I did not arrive at that figure.

Q. I understood you to state that you used that figure for the purpose of your calculation?

A. My calculation was based on volumes comparable to that.

Q. That year is past?

A. Yes, sir; that year, 1933, is gone.

Q. What was the actual amount of gas used by your Company for that year?

A. The only thing I know was the information given by Mr. Dunn, and I believe the figure he quoted was somewhere about nine billion cubic feet of gas. I have not had any occasion to go into that matter and determine for myself the actual production for the year.

Q. I will ask you if you didn't in your tax reports made to the State Comptroller pay taxes on the basis of having used up of the gas reserves of the company 5,432,255 M.C.F.?

[fol. 589] A. I don't know, Mr. Fitzhugh, and evidently, when you say to the State Comptroller, I take it you mean the State of Texas?

Q. Yes.

A. Of course, that report would not include any of the gas reserves used up in the state of Oklahoma; but in addition to that, I am not familiar with the report, have not seen it, and am not familiar with it.

Q. If an addition should be made to this figure on account of Oklahoma gas, there would not be added more than about five per cent, would there?

A. Now, I don't know; I don't know.

Q. Well, then, to get the comparable figure, so we will have Texas gas compared with Texas gas, on Mr. Dunn's schedule at the other hearing, which he used as a basis for your exhibit, the Texas gas for that year would have been in what amount in round numbers?

A. You mean of the total of 12,114,000,000?

Q. Yes, sir.

A. The amount of Texas gas, as shown on page 266 of this exhibit, would be 11,905,303 cubic feet.

Q. That eleven billion is a comparable figure with the 5,432,255 M.C.F. on which you made your tax reports?

A. If that is the amount reported to the Comptroller's office, I would say that it would be a comparable figure.

Q. Now, then, your value depended upon the accuracy of these figures?

[fol. 590] A. Yes, sir; to a certain extent.

Q. And if you had a slight mistake here your figures would be thrown off?

A. That is the main thing I tried to do in the preparation of this report—I realized the impossibility of making a forecast over a period of twenty years of the gas withdrawn from several fields; that is, the impossibility of being able to determine ten years from now just exactly how much gas is going to be withdrawn from that particular field, and I feel that in the preparation of a report such as this,—Exhibit 31—that all those matters of guess have been eliminated.

Mr. Fitzhugh: Now, may it please Your Honor, it appears from the examination of this witness and the explanation that he has made of this exhibit, that there is no legal basis for the exhibit as prepared at all, and we make a

motion at this time that the exhibit and the testimony in connection with it be stricken from the record, because, first, it involves a guess as to what will be the price of gas obtained by the Company from production to be obtained in future years; secondly, it contains a pure guess as to what will be the amounts of gas reserves used up in future years; thirdly, it applies a price to gas obtained in future years, and by so doing and capitalizing that value the whole method really represents a capitalization of earnings. In other words, it would be finding, Your [fols. 591-592] Honor, the rate base based upon a rate at the well head. It is similar to finding, and you had as well find the whole rate base by finding out what the Company made in one year and capitalizing that. There is no difference in capitalizing that return at the burner tip, or going on back and capitalizing their returns as they realized them at the well head; it is the same method. We think that the whole method used is too speculative, uncertain, conjectural, and inaccurate to be of any use whatsoever.

[fol. 593] Redirect examination.

Questions by Mr. Griffith:

Q. Mr. Huley, you stated during your cross-examination by Mr. Fitzhugh that all of the wells which would be utilized to produce these gas reserves over a period of twenty years would pass out at the end of the twenty year period. Was that through some inadvertence?

A. I did not mean at the end of a twenty year period, Mr. Griffith. Of course, it has been assumed that these wells will pass out gradually over a twenty year period and that the average of ten years will prevail.

Q. And you have utilized that average of ten years in the preparation of your exhibit?

A. That is correct, and, of course, that means that wells will be going out in 1933, 1934, 1935, and each year thereafter, when we arrive at an average of ten years.

Q. Now, do you have available here now the average price paid by the Lone Star Gas Company in the several gas fields from which it purchases gas from independent producers for a period of several years past?

A. Yes, sir; I do have such a tabulation from the year 1920 through 1931. That has not been brought right up to date. I just had that in my files.

Q. Mr. Huley, starting with the year 1927 and coming down through 1931 what has been the average field price paid for gas by the company?

A. The year 1927, the average price paid was .0624.

Q. In other words, that is—

[fol. 594] A. Six and a quarter cents per thousand cubic feet. In 1928 it was .0626; for 1929, it was .0676; for 1930, .0673; for 1931, .1633—in other words, about six and one-third cents per thousand cubic feet.

Q. Do you have any record available where you can give us the average field price paid by the Lone Star Gas Company to independent producers in 1932 and 1933?

A. No, I don't have that available here. However, for the year 1932 the average price was something less than that; in fact, as I remember now, it was a little less than six cents, and for 1933 it was less than that amount. Now, in just what proportions I do not recall at this time.

Q. Would you say that over the last several years the Lone Star Gas Company has consistently paid an average field price for gas from the several fields of six cents or a trifle less than six cents per thousand cubic feet?

A. I would say, Mr. Griffith, from 1920 through 1933 that the average paid by the Lone Star Gas Company as a field price for gas purchased would be slightly in excess of six cents per thousand cubic feet.

Q. Now, of course, the cheapest gas that the company buys is in the Shamrock district?

A. That is correct.

Q. In Wheeler County, in the Panhandle?

A. That is correct.

Q. And the company purchases substantial volumes of gas in that district?

[fol. 595] A. They do.

Q. And to the extent of those purchases, that serves to reduce the average field price which the company has paid since 1926?

A. That is correct.

Q. Now, you have stated that the company over a period of a number of years has paid an average field price for gas in the several fields approximating six cents per thousand cubic feet?

A. That is correct.

Q. Is it your judgment that in future years the company will pay an average field price for gas in the several fields approximating the price which it has paid in recent years?

A. Yes; I would say that that is true, Mr. Griffith. It may be for a short period of time that the price may drop a little bit below six cents, but I would say that the average would be around six cents per thousand cubic feet.

Q. Now, please refer to page 3 of your Exhibit 31.

A. Yes, sir.

Q. What is the average field price which you have used in determining your value of the net gas reserves of the Lone Star Gas Company as of January 1, 1933?

A. Five and three-tenths cents per thousand cubic feet.

Q. Or something less than the actual experience of the company over a period of years?

A. Yes, sir.

Q. Mr. Huley, notwithstanding the cross-examination to which you have been subjected, is it still your opinion that [fol. 596] the present fair value of the net gas reserves of Lone Star Gas Company as of January 1, 1933, is not less than \$2,681,689.00, as shown on page 2 of your Exhibit 31?

A. It certainly is.

Mr. Griffith: That is all.

Recross-examination.

Questions by Mr. Fitzhugh:

Q. Do you know how much the leases you have evaluated in this exhibit actually cost the company?

A. I believe, Mr. Fitzhugh, as of December 31, 1932, which is comparable to the date of this appraisal, the actual cash cost of the leases in the gas farms—that is, the producing properties—is well in excess of one million five hundred thousand dollars. That is as I remember the figure now.

Q. Now, the figure that you just gave includes all gas well construction and wells already completed on those gas farms?

A. No, sir; the figure I just read is the gas reserves alone—or do you have reference to the million and a half figure?

Q. Yes, the million five hundred thousand.

A. Oh, no; that is the cost of the leasehold itself.

Q. And of course the cost of the leasehold would cover the cost of any well that happened to be on it?

A. You mean that we drilled?

Q. No.

A. That is difference from equipment and construction. The total of the investment, December 31, 1932, was in excess of four millions of dollars.

[fol. 597] Q. And this million and a half figure included some gas well construction that had been done by some people other than yourselves?

A. Do you have reference to purchased wells?

Q. Yes.

A. Mr. Fitzhugh, it has been the practice of the company that when a leasehold was purchased with a producing well thereon that the materials alone should appear at current prices and the remainder of the cost was allocated to the cost of the leasehold, so the investment will only show just the leasehold cost and the physical material cost, if that is what you mean.

Q. So the million five hundred thousand dollar figure would include gas well construction?

A. If that were included, yes, sir; it would be the difference between those figures and the total cost.

Q. And that represents the cost to your company before any of those reserves were exhausted by your company?

A. Do you have reference to specific leases, or the entire land?

Q. The reserves represented by these leases, I mean.

A. That is correct—that is correct. That is true, with the exception of Petrolia field; and I believe I have made a former statement with reference to that; that is, at one time, I believe in 1926, where the depleted reserve had been written off against the total asset and the amount shown for Petrolia field was the net cost at that time—in other words, the depleted cost.

[fol. 598] Q. What do the books show, Mr. Huley, for the cost of Petrolia field?

A. For the total cost of Petrolia field, including well lines, production system property, etc.?

Q. Just the leases and the wells making up that?

A. Just a minute and I think I can give you that. At December 31, 1932, or 1933, the investment carried on Petrolia field for the leaseholds and gas wells amounted to approximately \$484,000.00.

Q. That is an unappreciated cost?

A. That is correct, with the exception of the leaseholds of which I have just offered the previous explanation.

Mr. Fitzhugh: That is all.

P. McDONALD BIDDISON, a witness for defendant, having been duly sworn, testified as follows:

Questions by Mr. Griffith:

Q. State your name, please.

A. P. McDonald Biddison—B-i-d-d-i-s-o-n.

Q. Mr. Biddison, you will have to talk pretty loud in order to make yourself heard. Where do you live?

A. Dallas, Texas.

[fol. 599] Q. In what business are you engaged?

A. Consulting Engineer, specializing in natural gas and petroleum work.

Q. Are you a graduate of any accredited engineering school?

A. I am, from Kansas State College of Agriculture and Applied Sciences in 1904 with the degree of Bachelor of Science in Electrical Engineering.

Q. Were you born in the State of Kansas?

A. I was.

Q. Following your graduation from Kansas State College, will you please relate to the jury what has been the general nature of the work which you have done and the general nature of the experience which you have had?

A. Well, in general my experience has been in natural gas and oil work, engineering. To be more detailed about it—

A. My first work was on construction and operation of cement plants at Iola, Kansas. Following that, I worked as electrician in a coal mine at Zeigler, Illinois, for about three months. My first work, in natural gas, began in 1905, at Columbus, Ohio, on the preparation of designs for the Kansas Natural Gas Company, then being constructed from

[fol. 600] the fields in Southeastern Kansas to Kansas City, Atchison, Leavenworth, St. Jo, Missouri, Topeka, Kansas, and Joplin, Missouri. I worked under the direction of their Consulting Engineer, who was at that time Chief Engineer for the Logan Natural Gas and Fuel Company at Columbus, Ohio, to which position I succeeded. In 1906 I went to Joplin, Missouri, with the Hope Engineering and Supply Company, designers and constructors of natural gas systems, and in 1907 I went to Independence, Kansas, as Assistant to the Chief Engineer of the Kansas Natural Gas Company, and in that capacity had charge of construction of gas compressing stations, pipe lines, regulating and measuring stations. In the fall of 1908 I went with the Columbia Gas and Electric Company as Construction Engineer on the construction of their transmission system from West Virginia to Cincinnati. In 1910 I went with the Ohio Fuel Supply Company, a natural gas company in Ohio, and did a year's construction work with them. In 1911 I was with The Texas Company at Port Arthur, Texas, on refinery construction, and in the spring of 1913 I returned to the Ohio Fuel Supply Company as Construction Engineer. I remained with them until the spring of 1919. My work in that connection embraced design and construction of gas compressor stations, regulating and measuring stations and transmission lines, and I also acted as Technical Adviser to the various departments of the company. While still retaining that connection, during 1915 and 1916 I conducted experiments on gasoline production from natural gas, and [fol. 601] subsequently built gasoline plants for that company and other companies. From 1917 to the spring of 1919 I also supervised the operation of gasoline plants for the Ohio Fuel Oil Company in West Virginia. From 1914 to 1918 I also acted in the capacity of Consulting Engineer to the Lone Star Gas Company, then having its main offices at Fort Worth, and in that capacity predicted the amount of drilling necessary to be done each year for the maintenance of an ample gas supply for their markets, predicted the amount of increased transmission capacity each year necessary to supply those markets, designed and supervised construction of their Petrolia compressor stations and of their Petrolia gasoline plant. During 1917 and 1918 I also acted as Consulting Engineer on was gases to the United States Bureau of Mines and for them supervised

the storage of helium in natural gas over the United States and supervised the construction and putting into operation of the helium plants at Fort Worth and Petrolia, Texas.

Q. By the way, what is helium, Mr. Biddison?

A. Helium is a comparatively rare gas, found in minute quantities in the atmosphere and found in some natural gases up to the limit of about two and a half per cent of the volume of the richest gases. This helium gas weighs practically twice as much as hydrogen, and it is non-combustible.

[fol. 602] Q. That is, you mean it will not burn?

A. Will not burn, will not unite with any other known substance, and was distributed by the United States Government for use in dirigible balloons on account of its non-combustible qualities. In the spring of 1919 I went to Mexico as Construction Engineer for the Agwi Compania, a subsidiary for the Atlantic, Gulf and West Indies Steamship Company; my work was the design and construction of oil pipe lines, oil pumping stations, and loading stations for boat loading of oil on steamships off-shore in the Gulf of Mexico. In 1920 I did similar work for the Tide-Mex Company, a subsidiary of the Tide Water Oil Company.

Q. This work was likewise done in Mexico?

A. Yes. I returned to the United States in the spring of 1921, and in September, 1921, became affiliated with interests owning gas producing leases in what is called the Monroe Gas Field of Louisiana, and in what has been called the Panola County Field of Texas. These interests also at that time owned the Dallas Gas Company and the County Gas Company, serving gas to the City of Dallas and its surrounding communities and incorporations. These distributing properties at Dallas were sold in the fall of 1926, and I remained in Louisiana with those producing properties. I had, up to the time of the sale of the distribution [fol. 603] properties, acted in the capacity of Consulting Engineer to those properties, and I managed the producing properties in the Monroe Field and in the Panola County Field, and while with those properties constructed transmission lines to nearby markets and built distribution systems, a gasoline plant and a carbon black plant. Those properties were sold in 1926 to interests affiliated with Electric Bond and Share, and I remained with them until 1928. During the period of those connections I investi-

gated all markets within conceivable pipe line reach of the Monroe Field, and made estimates and reports upon pipe lines to Dallas, Texas, to Houston, Texas, to Lake Charles, Louisiana, to Alexandria, Louisiana, to Baton Rouge and New Orleans, Louisiana, to Birmingham, Alabama, to Atlanta, Georgia, to Memphis, Tennessee, and to St. Louis, Missouri. I supervised the construction of a portion of the line from the Monroe Field to Baton Rouge, and supervised the construction of the entire extension of that line running from Baton Rouge to New Orleans. I supervised the construction of a pipe line from the Monroe Field to Eldorado and Camden, Arkansas. I participated in the negotiations leading to the construction of the pipe line to Memphis, Tennessee.

Q. From the Monroe Field?

A. From the Monroe Field; and I participated in the negotiations leading to the construction of the pipe line [fol. 604] from the Monroe Fields to St. Louis. In 1928 I severed my connection with those properties in Louisiana, and opened an office at Monroe, Louisiana, as Consulting Engineer. I made a valuation in that capacity of the properties of the then Fort Worth Gas Company, which is now the Fort Worth Division of the Lone Star Gas Company. I made an estimate and report for financing for a pipe line into Salt Lake City and Ogden, Utah, and one or two other minor reports during the year 1928. I then became associated with the Southern Natural Gas Corporation, and remained with them until the summer of 1931, as Consulting Engineer in connection with the construction of their transmission system from the Monroe, Louisiana, Gas Field, across Mississippi and Alabama into the major cities of western Georgia, and supervised personally the construction of a branch of that system serving Macon, Georgia, Montgomery, Alabama, and Columbus, Georgia, and the section from near Jackson, Mississippi, to Mobile, Alabama, and Pensacola, Florida. This system, all-told, embraced about 1600 miles of transmission lines. I also acted in the capacity of Consulting Engineer to their affiliated companies in Mississippi, Alabama, and Georgia, who were constructing at the same time distribution systems in numerous towns in those States. Upon completion of this work in 1931 I opened my office at Dallas, Texas, and am maintaining that office at this time. Since opening that Dallas

[fol. 605] office my work has been largely that of valuation and reporting on natural gas properties, and I have done such work for numerous natural gas companies.

Q. You are now, and have been for some time, under retainer by Lone Star Gas Company?

A. That is correct.

Q. Whereby your engineering services are made available to the Lone Star Gas Company, among others?

A. That is correct.

Q. Would you say that as a result of your experience, Mr. Biddison, you are familiar with all of the ramifications of the natural gas business, starting with the inception of a natural gas project, the construction of the project the financing of the project, the building up and acquiring of the business upon the completion of the project, and its actual operation?

A. I am.

Q. Are you familiar with the utilization of gas, as well as its production, compression, transportation, and delivery?

A. I am.

Q. You have a familiarity with the public service property plant and business of the Lone Star Gas Company, the defendant in this case?

A. I do.

Q. Mr. Biddison, there has previously been introduced in [fol. 606] evidence here by Mr. E. A. Steinberger an inventory and appraisal upon the basis of Cost of Reproduction New, January 1, 1933, of the Public Service Plant, Property and Business of the Lone Star Gas Company. Did you participate in that work?

A. I did.

Q. Will you please relate to the jury the general nature of the work that you did in connection with that appraisal?

A. I have made detailed examinations of the inventory, have had that checked against the inventory maps maintained by the Company's Engineering Department; have had a detailed check made of the equipment on gas wells, partly from Engineering Department records, but most largely from field inspections. I have had checks made in the field and from Engineering Department inventory records of the equipment in measuring stations. I have had field checks made, as well as checks made of inventory maps of the equipment in gas compressing stations. I think I have fairly

accurately checked the inventory in all of its major subdivisions of property, so that I am satisfied as to the substantial accuracy of the inventory. I have no question that there still remain in the inventory some few items whose description is not as complete as it should have been; but as to the quantities of materials I am satisfied that the inventory is one of a high degree of accuracy.

Q. Now, the appraisal which has been introduced in evidence here purports to be, as reflected by the title cover, the joint work of E. A. Steinberger, yourself, and Ed. C. Connor. Will you please explain to the jury the primary responsibility of Mr. Steinberger, yourself, and Mr. Connor in connection with this appraisal upon the cost of reproduction new at January 1, 1933?

A. Mr. Steinberger's prime responsibility was the compiling of the inventory; secondly, he is responsible for the mechanical operation of assembly of the data, the pricing of the units of material and the units of construction cost. My prime responsibility is for the determination of the unit costs of physical property. Mr. Connor's prime responsibility was for the determination of the collateral construction costs, sometimes called undistributed general costs, and for the determination of the amounts of non-physical values embraced generally in the classes of working capital and going concern value. Now, that gives a distribution of the prime responsibility. I had been in touch with Mr. Connor throughout the preparation of those parts of the valuation for which he is primarily responsible, and I am in entire agreement with him as to the amounts derived for the values which he has determined, and as to the methods which he used in the derivation of those values. He will himself, however, be in much better position to explain those methods and those costs than will I. I have previously stated that I am in entire agreement with the inventory.

[fol. 608] Q. Now, as far as the determination of unit costs is concerned, as applied in Exhibit 28 to the various classifications and items of physical property, do you assume prime responsibility?

A. I do.

Q. Will you refer, please to Exhibit 28. What is the first item of physical property set forth in Exhibit 28?

A. Production System Property, in the amount of \$9,141,848.05.

Q. Now, what does that consist of, Mr. Biddison?

A. As shown on page 2, this System may be subdivided into the general classifications of Leaseholds—Developed, \$2,681,689.00; Leaseholds—Undeveloped, \$893,291.28; Gas Wells, \$3,908,424.15; Other Production System Structures, \$9,450.29; Other Production System Equipment, \$95,764.08; General Supervision—Allocated, \$148,596.00; and Undistributed General Costs, \$1,404,643.25; producing, as shown on page 2, the total for Production System Property of \$9,141,858.05, which figure has been carried forward on page 1 as the first item of Physical Property Including Undistributed General Costs, on that page.

Q. Now, Mr. Biddison, there has previously been introduced in evidence an exhibit by Mr. Huley, labeled Defendant's Exhibit 31, herein, giving a net value of Developed Leaseholds in the amount of \$2,681,689.00.

A. Yes, sir.

Q. So the determination of that item was made by Mr. Huley?

[fol. 609] A. That is correct.

Q. And there has also been introduced in evidence here an exhibit sponsored by Mr. E. A. Steinberger—being Exhibit 32, I believe, giving the actual cost to the Company of the Undeveloped Leaseholds for which no reserves have been calculated, in the amount of \$893,291.28.

A. That is correct. And reference is made in this valuation to those figures derived by Mr. Huley and by Mr. Steinberger. On page 8 of Volume 1 of this valuation reference is made to the report by Mr. Huley covering Leaseholds—Developed, in the amount of \$2,681,689.00; and that figure is carried forward from page 8 to page 2 of Volume 1, and on page 9 of Volume 1 of this valuation the determination by Mr. Steinberger of the cost to the Company of leases, for which Mr. Dunn computed no reserves, is shown to be \$893,291.28; and that figure is carried forward from page 9 to page 2 of Volume 1 of this valuation.

[fol. 610] Q. It would therefore appear, Mr. Biddison, that the first item of physical property for which you assume primary responsibility in the matter of determining the reproduction cost new is that classification of property known as gas well equipment?

A. That is correct.

Q. Now I believe Mr. Steinberger has previously testified concerning the property which is comprised and included in

the classification known as gas well equipment. Will you please relate to the jury just how you went about determining the reproduction cost new of the gas well equipment which was owned and used and operated by the Lone Star Gas Company in the public service as of January 1, 1933?

A. The first group of this property which is set out in this valuation in detail is that for the Chickasha field in Oklahoma. A recapitulation of the values found for that field is shown on pages 11 and 12, where values are shown for each individual well in the field.

Q. Pages 11 and 12 constitute a summarizing of the developed cost of gas well equipment on gas wells in the Chickasha field and developed costs are set out in detail commencing at page 13 of Volume 1 of Exhibit 28?

A. That is correct. On page 11 the first well shown is the S. H. Brown No. 1, at a reproduction cost new of \$12,971.47. The developed cost of that well is shown on page 13. On this page the materials found by inventory of that well have been priced at the existing prices for such materials as of the [fol. 611] date of the inventory, January 1, 1933, from which is derived a total cost of materials of \$3,461.13.

Q. Is your development of the unit cost to be applied to the S. H. Brown No. 1 well, typical of the unit costs for all other gas wells of the company in the Chickasha field?

A. It is.

Q. Will you please give a detailed development, then, of this typical application of your unit costs?

A. Having determined that the cost of materials was \$3,461.13, I have next estimated the cost of installation of fittings at the well top, the connecting up of this well, ready for service. An analysis of the labor costs for performing such services on eighteen installations made by the Lone Star Gas Company, pricing the labor at the labor prices prevailing as of January 1, 1933, produced a cost for installation of well fittings in Oklahoma of \$21.13 each. In addition to the labor of installation, there is a cost incurred for handling and checking materials which amounts, in the experience of the Lone Star Gas Company to four per cent on materials. Four per cent on the \$3,461.13 of materials in this well is \$138.45, which added to the \$21.13 of labor in making the connections, produces the figure of \$159.58, which is set up on page 13 as the installation of fittings charge. Now the largest amount of cost in this well is the

drilling cost shown on page 13 to be \$9,350.76, or \$4.2992 per foot on 2175 feet of depth for this particular well. This figure has been arrived at on the basis of cost of \$2.75 per [fol. 612] foot for drilling contract, plus a cost of \$1.5492 per foot of other costs to be incurred by the company outside of the drilling contract, in connection with the drilling of wells in the Chickasha field.

Q. Now was the figure of \$2.75 per foot as the drilling contract costs, the current or going contract price in the Chickasha field as of January 1, 1933?

A. It is.

Q. From what source did you determine that the company's costs were \$1.54 plus per foot in addition to the drilling contract costs?

A. This cost was determined from an analysis of drilling costs in various fields by the Lone Star Gas Company, in which the actual expenditures shown by the analysis by the company were \$1.3017 per foot. Now, to allow for the contingencies which may arise in the application of a figure derived from experience, to other drilling, I have added as a contingency item \$.2475 per foot, producing a total estimated cost for the operations to be performed by the company of \$1.5492 per foot.

Q. Mr. Biddison, give the jury a general idea of what is included in this cost of \$1.54 per foot which it would cost the company in addition to the drilling contract price; that is, just a statement of the miscellaneous items that would be included in that cost?

A. The drilling contract figure which I have set up, contemplates the furnishing by the company of a rig, the furnishing by the company of water and fuel for drilling; the [fol. 613] delivery at the well by the company of the casing—

Q. And therefore it would include hauling costs?

A. Yes. The materials in the string of casing which may be lost, damaged or destroyed in drilling, or the company's property and other cost which is borne by the company; the company furnishes the slush pit.

Q. What is a slush pit, Mr. Biddison?

A. A slush pit is a pit which in the operating of a rotary rig serves the purpose of a settling basin in which the cuttings made by the drill in the bottom of the hole which are flushed up to the top by the circulation of liquid mud,

may be settled out of the mud and the mud may be pumped back and kept in circulation. The cementing of the various strings of casing is not a part of the drilling contract at the price set out in this estimate for such contract; the expense of providing materials for making of mud is to be met by the company, and there are other small items of miscellaneous expense and materials besides the supervision by the company's forces of their operations and of the operations of the contractor. These are the items that constitute the company's cost in connection with drilling wells.

Q. Have you now stated to the jury all of the items which would be generally included in the company's costs of \$1.54 per foot of wells drilled and which costs would be in addition to the contract price?

A. I have.

Q. Therefore by applying the developed cost per foot of [fol. 614] \$4.29 plus to the depth drilled in this well of 2175 feet, you obtain the total drilling cost of \$9,350.76?

A. That is correct, and by adding together the material costs which I have cited, the installation of fittings costs which includes stores expense on fittings, and the labor of connecting up, and the drilling cost, I arrive at the total for this well of \$12,971.47.

Q. Now Mr. Biddison, in the application of material costs covering casing and pipe and gate valves and fittings, from what source did you obtain those prices? That is, did you use the lowest quoted prices prevailing as of January 1, 1933?

A. They are.

Q. The lowest quoted prices?

A. The lowest quoted prices from the manufacturers of the various classes of materials, as of the date of the appraisal.

Q. Now Mr. Biddison, the development of the cost of gas well equipment for the S. H. Brown No. 1 well, in the Chickasha field—is that development of cost typical of all of the other wells in the Chickasha field?

A. It is.

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[fol. 615] Q. Mr. Biddison, in testifying as to the cost of installation of fittings on the S. H. Brown No. 1 Well, in the Chickasha Field, what direct labor costs did you use—

that is, I mean what rate of pay for the various men engaged in the work?

A. Foremen, 60 cents per hour; assistant foremen, 45 cents an hour; laborers, 35 cents per hour; truck drivers 45 cents per hour.

Q. Were those current wages being paid by the Company in similar enterprises as of that date?

A. Yes, sir.

Q. Are the labor rates any less as of today?

[fol. 616] A. No, sir; on the contrary, labor rates today are higher.

Q. Now, what have you used for field supervision, for public liability, workmen's compensation insurance, and other expense in connection with these?

A. For field supervision, 5 per cent of the direct labor costs; for public liability and workmen's compensation insurance, in Oklahoma, 5.59 per cent; in Texas, 8.48 per cent; for tools and construction plant expense, in Oklahoma, 10.9 per cent; in Texas, 11 per cent;—the insurance rate for liability and compensation insurance is lower in Oklahoma than it is in Texas; therefore, when you apply the respective insurance rates to the labor embraced in tools and construction plant expense, you find a total for tools and construction plant expense in Oklahoma of slightly less than in Texas.

Q. What is embraced and included in the term "Field supervision"?

A. The unit costs that have been developed for use in this appraisal are the costs incurred by the construction gangs up to and including the first foreman. Now, each gang headed by a foreman requires some supervision by a field organization, and it is this supervision of the various gangs headed by other individual foremen which is embraced in this evaluation under the heading of field supervision. The ratios of field supervision to direct labor vary somewhat with the character of work done, and are lower [fol. 617] in connection with operations in the gas fields than they are in connection with the construction of the main line properties.

Q. Is that five per cent for supervision based upon the actual experience of the Company?

A. It is. It is based on an analysis of doing this class of work.

Q. Now, Mr. Biddison, the development of the unit costs given by you in connection with the S. H. Brown No. 1 Well apply to all other wells in the Chickasha Field, I believe you have testified?

A. That is correct.

Q. So having given the S. H. Brown No. 1 Well,—or rather a description of the development of your unit costs in that connection, will the same description be generally adaptable to all other wells in the Chickasha Field?

A. It would. I might well point out that, besides the wells which the Lone Star Gas Company owns themselves in the Chickasha Field, there are a number of wells from which the Lone Star Gas Company purchases gas, and in connection with those wells they have some equipment installed. Now, that equipment is set out in detail on page 12 of Volume 1.

Q. And a detail of that equipment appears, commencing at page 49 of Volume 1, of Exhibit 28?

A. It does. The first well in that group being Alma Petroleum Company, Parks No. 2.

[fol. 618] Q. That miscellaneous equipment located on the wells of other producers appears at pages 49 to 54, inclusive, of Volume 1, of Exhibit 28?

A. It does, and the amounts set out for the individual wells on those pages is carried forward to the recapitulation of that class of equipment on page 12.

Q. Will you refer, please, to page 55 of Volume 1, Exhibit 28. That page appears to be a recapitulation, or a summary, of the cost of gas well equipment in the Duncan Field?

A. It is.

Q. As in the Chickasha Field, does the Lone Star Gas Company own a number of wells itself, and then does it buy gas from other independent producers in the field?

A. It does, and on page 55, the first group, headed "Fee Wells", represents the value of the wells owned by the Lone Star Gas Company; while the second group, headed "Other Owned Wells", meaning wells owned by others than the Lone Star Gas Company, represents the equipment installed in connection with the wells from which the Lone Star Gas Company purchases gas in the Duncan Field.

Q. Now, what was the drilling contract price for drilling of wells in the Chickasha Field, as of January 1, 1933—I mean the Duncan Field?

A. \$2.50 per foot is the drilling contract price.

Q. Now, if we refer to the Lone Star Gas Company [fol. 619] Brooks No. 3 Well, appearing on page 56 of Volume 1, of Exhibit 28, we note that you have adopted a drilling cost of 4.0492 per foot; is that correct?

A. Correct.

Q. How was that cost arrived at?

A. That figure is comprised of \$2.50 per foot drilling contract for the work to be done by the driller, plus \$1.5492 per foot to cover the cost of work to be performed by the Company itself, in addition to the work to be performed by the drilling contractor, arrived at in the same manner as I have previously explained for the Chickasha Field. The Chickasha Field, the contract price for the work to be performed by the drilling contractor was \$2.75 per foot; in the Duncan Field it is 25 cents cheaper, or \$2.50 per foot. In the Chickasha Field, the estimated cost of the work to be performed by the Company is \$4.2992 per foot, while in the Duncan Field, the estimated work performed—I misquoted; start back—

Q. You want to make a correction, Mr. Biddison?

A. Yes, sir. In the Chickasha Field the amount of work to be done by the drilling contractor is at the rate of \$2.75 per foot of drilling, while in the Duncan Field the amount to be done by the drilling contractor is 25 cents per foot cheaper, or \$2.50. In each case the amount of work to be done by the Company is estimated to be \$1.5492.

[fol. 620] Q. Per foot?

A. Per foot. The sum of these produces a total cost in the Chickasha Field of \$4.2992; in the Duncan Field, \$4.0492 per foot.

Q. In both the Duncan and Chickasha fields you have used the same allowance for field supervision, for public liability, and workmen's compensation insurance, and for tools and construction plant expenses?

A. That is correct.

Q. When I say the same amount, I mean expressed as a percentage?

A. I so understood it, and that is correct.

Q. With that differentiation as between the Duncan Field and the Chickasha Field drilling costs, Mr. Biddison, is it true that you have used costs in connection with the drilling of wells in the Duncan Field similar in all substantial

respects with the costs which you have used in connection with the Chickasha Field?

A. I have.

Q. Now, the Miscellaneous Equipment of wells other than those owned by the Lone Star Gas Company in the Duncan Field is set forth in detail under your listing of Gas Well Equipment covering the Duncan Field?

A. It is, the first of such wells being shown on page 61, the Harry Abels-Armstrong No. 2; and this listing continues to and including page 69; and the cost for individual [fol. 621] wells found on these pages is carried forward and set down opposite the respective wells on page 55.

Q. Will you refer, please, Mr. Biddison, to page 70 of your exhibit? What appears on that page?

A. On page 70 is a recapitulation of the reproduction cost new of gas well equipment in the Fox Field, in Oklahoma.

Q. Where is the Fox Field located?

A. Roughly, north of Gainesville, Texas, in Southern Oklahoma.

Q. Now, Mr. Biddison, refer, please, to the first well appearing on page 72 under the heading "Gas Well Equipment Fox Field." That well appears to be the Lone Star Gas Company Allen and Gilbert No. 1 Well?

A. That is correct.

Q. As in the case of the Duncan and Chickasha fields did you apply current costs for material entering into gas well equipment?

A. I did, and so derived the total costs of materials for that well.

Q. And your unit costs development of the installation of fittings was comparable to the unit costs used in connection with the Chickasha and Duncan Fields?

A. Yes, sir; derived in the same manner.

Q. Now, what was the adopted costs per foot of drilling in the Fox Field? Are those wells really located in the Loco District?

[fol. 622] A. They are in the same general area; they are close together; and the costs developed for drilling in the Fox Field are the same as in the Loco general area. The contract price for the work to be performed by the contractor is estimated at \$1.50 per lineal foot.

Q. Was that the current cost as of January 1st for drilling contract work?

A. It was; while the costs of the work to be performed by the Company in addition to the work done by the drilling contractor, as in the case of the Duncan and Chickasha fields, is estimated to be \$1.5492, giving a total cost of drilling these wells of \$3.0492 per lineal foot of drilling.

Q. And is that the figure which we find applied to the total depth of the well, 839 feet, as shown on page 72 of Volume 1 of Exhibit 28?

A. It is. I might point out, in general, that the costs per foot of drilling increase as the well becomes deeper. Now, the drilling of this one at a depth of 839 feet, has a lower cost per foot for contract work, and also a lower cost per foot for the total cost of drilling work, including the contract work and the Company's work, than it did on the other fields cited.

Q. Did you use the same allowance for field supervision, for employer's liability, for workmen's compensation, and public liability insurance?

[fol. 623] A. The same percentage was applied to the direct labor.

Q. And the same percentages for tools and construction plant expense?

A. That is correct.

Q. By the way, Mr. Biddison, what do you mean by Tools and Construction Plant Expense?

A. Tools and Construction Plant Expense embraces miscellaneous services to be performed in connection with the construction work, such as the providing of watchmen, and providing of water-boys, and costs of ice and water for workmen, the cost of watchmen, the cost of protecting roadways, when excavation is being done around roadways, oil for lanterns, the use of lanterns themselves, and the expenses of moving men, tools, and small miscellaneous materials.

[fol. 624] Q. In other words, it consists of a series of what we might call miscellaneous items?

A. Miscellaneous general items; yes, sir.

Q. Now, in the same manner that you developed the cost of gas well equipment covering Lone Star Gas Company Allen & Gilbert well, page 72, did you similarly develop the cost of gas well equipment in connection with all other wells in the Fox field?

A. That is correct; I did.

Q. Refer, please, to page 91 of Volume 1, Exhibit 28, and also to pages 92 and 93. What is detailed on that page, or those pages?

A. On those pages there has been set out a recapitulation of the reproduction cost new of the wells owned by Lone Star Gas Company and the equipment owned by Lone Star Gas Company and connected to wells of others in the Panhandle field of Texas, in Wheeler County, or in that portion of the Panhandle field known as the Shamrock area.

Q. Now, Mr. Biddison, is the Lone Star Gas Company M. E. Ackley No. 1 well set forth in detail on page 94 of Volume 1 of Exhibit 28 typical of your development of costs for the gas well equipment in connection with wells in the Shamrock district in Wheeler County?

A. It is.

Q. Will you please explain to the jury how you arrived at those unit costs in connection with this well?

A. The materials are priced at the prices quoted by manufacturers of those materials as of January 1, 1933. [fol. 625] They are priced at cost based upon those quotations f. o. b. the Shamrock field. The total materials so priced in this M. E. Ackley No. — well is \$4,924.01. The work of connecting up the well—this well being in Texas—is estimated at \$21.60 per well, based upon an analysis of the labor incurred in the connecting of eighteen such installations. Now, this figure is slightly different from the figure used for that same work in Oklahoma, the difference being entirely due to the difference between the rates for liability compensation insurance between Oklahoma and Texas; the Oklahoma insurance rate being lower, the cost over all for those connections is lower in Oklahoma than in Texas. The difference is forty-seven cents per well, due to insurance.

Q. Forty-seven cents per foot per well?

A. No, sir; forty-seven cents per well.

Q. Forty-seven cents per well?

A. Yes, sir. In the items set out here on page 94, installations of fittings, \$218.56, is included this \$21.60 labor cost for making the connection; plus four per cent stores expense on the figure of \$4,924.01 of materials in the well. Now, in addition to those two figures which I have cited, being the material cost and installation of fittings, which includes stores expense, there is the item of \$9,191.88, drill-

ing cost for 1945 feet of drilling in this well. This is at the rate of \$4.7259 per foot, and that cost is composed of contract rate of \$3.00 per foot; this is the work that would be performed by the drilling contractor, plus the cost of [fol. 626] \$1.7259 per foot for the work to be performed by the company in connection with the drilling of such a well beyond the cost to be borne by the contractor, producing a total figure of \$4.7259 per foot as the total drilling cost of such wells.

Q. Was three dollars per foot to be paid the drilling contractor the current or going price for such work in the Shamrock territory as of the date of your appraisal?

A. It was.

Q. Now, from what source did you develop your average cost of \$1.72 plus per foot as the company's cost in connection with this well?

A. That was developed from an analysis of the cost actually incurred by the company outside of drilling contracts in drilling wells in the Panhandle field.

Q. And is it to be contrasted with the figure of \$1.54 plus per foot which was used by you as a part of your unit cost of development in connection with the Chickasha field?

A. That is correct.

Q. Now, Mr. Biddison, in the same manner that you developed your cost for the M. E. Ackley No. 1 well in the Panhandle field, did you similarly develop the cost of other wells in that field?

A. That is correct.

Q. And which wells are set forth on page 94 and subsequent pages in Volume 1 of Exhibit 28?

A. That is correct.

Q. In the same manner that you developed the cost of [fol. 627] material installed on wells of independent producers from which Lone Star Gas Company is buying gas in the Chickasha district, did you develop your unit cost of materials installed on the wells of independent producers in the Panhandle district?

A. I did, in the same fashion. On the wells owned by others in the Lone Star territory there is no cost for drilling, only the cost of materials used in connecting the wells to the lines of the company.

Q. Will you refer to pages 154 and 155 of Volume 1 of Exhibit 28?

A. On pages 154 and 155, are set out estimated costs of reproduction new of the wells owned by the Lone Star Gas Company in the Petrolia field in Clay County, Texas. In addition, on page 155 is set out an item of \$67.14 for equipment owned by the Lone Star Gas Company which is used in connecting a well owned by others to the lines of the Lone Star Gas Company.

Q. Practically all of the items included in gas well equipment in the Petrolia field, however, cover wells which are owned by the company?

A. That is correct; all except \$67.14.

Q. Now, will you refer to page 156 of Volume 1, Exhibit 28. The first well listed appears to be Lone Star Gas Company Block No. 15, Well No. 1. If you give the unit costs of that well, will that be typical of the other wells in the field?

A. It will be.

[fol. 628] Q. Please explain how you arrived at that unit cost development covering this well.

A. As in the case of all other examples cited, materials in this well were priced at prices quoted by the manufacturers of such equipment as of January 1, 1932, f.o.b. Petrolia delivery point. The total cost of materials so priced for this well is \$2,261.51. To this is added the cost of installation of fittings, embracing four per cent on the materials in the well to cover the handling and checking of materials, and a charge of \$21.60 for connecting the well to the field lines. In addition, there is a drilling charge of 1684 feet at \$3.5492 per foot, or \$5,976.85. This drilling cost consists of a contractor's charge of \$2.00 per foot for the amount of work to be performed by the drilling contractor and a charge of \$1.5492 per foot for the work to be performed by the company's forces in addition to the work to be performed by the contractor. Now, there has practically no drilling work been done in the Petrolia field for some considerable time, and a true current price for drilling in that area can hardly be obtained. This price of \$2.00 per foot, however, is taken as being an equitable price, based upon past experience of drilling in that area.

Q. I believe, Mr. Biddison, that through mistake you said you used prices current on material as of January 1st, 1932.

A. January 1, 1933.

Q. If you said January 1, 1932, you meant January 1, 1933?

A. I meant January 1, 1933, because that is the date as of [fol. 629] which the inventory was basically taken and that is the date on which prices were basically secured, and that is the date of the valuation itself.

Q. And not only in connection with gas well equipment materials but all other materials entering into Exhibit 28, the basic prices were as of January 1, 1933?

A. That is correct.

Q. Have you finished your explanation of the total costs in connection with this well appearing on page 156?

A. I have.

Q. In connection with labor costs in the Petrolia field did you use the same labor costs covering foreman, laborers, assistant foremen and truck drivers that were used by you and testified to in connection with the Chickasha field?

A. I did.

Q. Refer, please, to pages 183, 184 and 185 in Volume 1, Exhibit 28. What appears on those pages?

A. On those pages is presented a recapitulation of the reproduction cost new as estimated of wells which are in general located in the West Texas area. This West Texas area embraces several pools.

Q. What are those several pools or subdivisions of the West Texas field?

A. Well, those subdivisions are variously named by different people. But there is an X-ray field, an area known as the Tiffin field, one known as the Sipe Springs field, there is a Moran field, a Leeray area in Stephens and Eastland counties, and that term is sometimes used to cover a [fol. 630] much larger area than one pool at Leeray; there is an area at Frankell in Stephens County; there is an area at the town of Eastland in Eastland County; there is Desdemona field in Eastland County, Cheaney pool in Eastland County, and a Brad area in Palo Pinto County.

Q. Now, in connection with your development of unit cost covering wells in the West Texas field, did you similarly secure basis prices for the material entering into the equipment as of January 1, 1933, and apply those prices to the inventory of material as set forth in the exhibit?

A. That is correct.

Q. And did you use the same development covering the installation of fittings as was used in connection with the Panhandle, Petrolia, Chickasha, and other fields?

A. Identically.

Q. Did you use the same unit cost per foot of drilling and covering company's cost in connection with these several fields?

A. No.

Q. That is, I mean by "several fields", Mr. Biddison, the various pools or areas in what is known as the West Texas field?

A. No, because all contract drilling in various divisions of the East Texas field differs.

Q. You mean the West Texas field?

A. In the West Texas field differs, and I have used a [fol. 631] drilling contract price for the various divisions which I have cited which applies to that division.

Q. In order that the jury may know the various contract prices and company costs per foot adopted and used by you in connection with Exhibit 28, I will ask you to relate the prices that were used.

A. For the Brad field in Palo Pinto County, drilling contract, \$3.00; company cost, \$1.4819; shooting and cleaning, \$0.1150; total, \$4.5969.

Q. Now, all of those costs that you are testifying about are per foot, Mr. Biddison?

A. They are. Cheaney field, Eastland County, drilling contract, \$2.50; company cost, \$1.4819; shooting and cleaning, \$0.1150; total, \$4.0969. Desdemona field in Eastland County, drilling contract, \$2.50; company cost, \$1.4819; shooting and cleaning, \$0.1150; total \$4.0969. Eastland field, Eastland County, drilling contract, \$3.00; company cost, \$1.4819; shooting and cleaning, \$0.1150; total cost, \$4.5969. Frankell field, Stevens County, drilling contract, \$3.00; company cost, \$1.4819; shooting and cleaning, \$0.1150; total, \$4.5969. Leeray field, Stevens and Eastland Counties, drilling contract, \$3.00; company cost, \$1.4819; shooting and cleaning, \$0.1150; total cost, \$4.5969. Moran field, Shackelford County, drilling contract, \$2.00; company cost, \$1.4819; shooting and cleaning, \$0.1150; total cost, \$3.5969. Sipe Springs field, Eastland County, drilling contract, \$2.50; company cost, \$1.4819; shooting and cleaning, [fol. 632] \$0.1150; total cost, \$4.0969. Tiffin field, Stephens

County, drilling contract, \$3.00; company cost, \$1.4819; shooting and cleaning, \$0.1150; total cost, \$4.5969. X-ray field, Erath County, drilling contract, \$2.50; company cost, \$1.4819; shooting and cleaning, \$0.1150; total cost, \$4.0969. [fol. 633] Q. Now, Mr. Biddison, in a manner similar to the application of your developed unit costs covering the Chickasha Field, for example, have you applied these costs which you have just read to the determination of your total costs covering gas well equipment in the various pools or gas area included under the general classification of West Texas Fields?

A. I have.

Q. And in a similar manner have you applied these in a manner similar to your application of the installation of materials in the Chickasha Field, have you applied your developed unit costs to the gas well equipment of the Company which is located upon the wells of independent producers in the several West Texas fields?

A. I have.

Q. Now, Mr. Biddison, you spoke of the cost of shooting and cleaning of wells. Are the costs adopted and used by you in that connection the result of the actual experience of the Company?

A. They are.

Q. And has the Company probably done more drilling work in that area in the last few years than any other producer?

A. I think more than any other single operator.

Q. Does that cover the total of gas well equipment, Mr. Biddison—that is, with your description of the development of costs covering the West Texas Fields?

A. It does, and embraces up to and including page 271 [fol. 634] of Volume 1.

Q. If we refer now to page 2 of Volume 1 of Exhibit 28, do we find carried forward into the summary a total of \$3,908,424.15 representing your evaluation of gas well equipment?

A. That is correct; and that is—

Q. And the cost of drilling wells?

A. And that is the amount of the estimated cost to drill these wells, developed as I have explained, from page 10 of this Volume 1 to and including page 271.

Q. Mr. Biddison, if we refer to pages 272 to 275, inclu-

sive, we find a listing of property styled Other Production System Structures.

A. That is correct.

Q. What is the basis for your evaluation of Other Production System Structures?

A. Those structures are described in general on the succeeding pages 273 to 275, and on those pages the estimated cost to reproduce each building is shown. I have not attempted to show, however, in detail in this typed valuation all the steps leading to these costs of each structure, because to do so would have made this report, instead of being eight volumes, maybe fifty or sixty volumes, if that had been carried out in regard to all structures.

Q. Take some one of the Other Production System Structures listed, Mr. Biddison, and relate to the jury how you developed your unit costs.

[fol. 635] A. Now, the details of the estimates for each one of these structures are contained in these bound volumes of working papers; there are twenty-nine of these volumes of working papers, to support the eight volumes of the evaluation itself.

Q. If counsel for the State of Texas so desire, will you be able to give a complete breakdown of your development of unit costs on each and every single item of structures?

A. Yes.

Q. Take any one of the structures listed under the heading Other Production System Structures, and relate to the jury how you developed your appraised cost.

A. Well, a simple one to take to explain, and the explanation would be in line with the method of handling all the others, would be the first item, Pressure Man's Cabin on Brooks Lease, Stephens County, Texas. That building is 8 by 10 in plan, wood frame, corrugated galvanized iron cover, dirt floor, and one door. In Volume 2 of the working papers there has been priced out at a figure representing the cost in place of each item of materials, the materials from which this building is constructed, while in Volume 26 of the working papers there has been developed the cost in place of those materials. Now, this particular structure is nearer to the town of Moran than to any other location; therefore, the material prices used are those [fol. 636] quoted by Rockwall Brothers Lumber Company, at Moran, Texas. Now, in this book 2 of the working

papers the first classification of materials in this structure is the framing, bottom-plate, 2 by 6, point 236 hundred feet board measure of lumber, priced at \$7.24 per 100 in place, or \$2.61 for bottom-plate; this unit price of \$7.24 in place, which is \$72.04 per thousand in place, is composed of \$4.00 per 100 feet board measure, or \$40.00 per 1000, delivered price for the lumber at the location; from which is deducted a 2 per cent cash discount of 8 cents, to produce a delivered price of \$3.92 net, to which has been added an allowance of $7\frac{1}{2}$ per cent waste, or 29 cents, giving a net price, plus waste of \$4.21; to this is added stores expense at 4 per cent,—stores expense constitutes the field expense of handling and checking material—which produces a total cost, at the job for the material, of \$4.38 per 100 feet board measure, or \$43.80 per 1000; the estimated cost for installation on this class of lumber is \$2.86 per 100 feet board measure, or \$28.60 per 1000,—producing a total cost in place of this 2 by 6 lumber of \$7.24 per 100 feet board measure. Now, that same explanation holds true with regard to the studs, rafters, purlins, and miscellaneous framing and braces. The corrugated galvanized iron with which this building is covered, 3.91 squares, is priced at ~~\$10.54~~ per square in place; that consists of 24 gauge, quoted by Rockwall Brothers Lumber Company at [fol. 637] \$6.25 per square, delivered; 2 per cent cash discount deducted of 13 cents, producing a net delivered price of \$6.12, to which is added an allowance of 10 per cent for waste, or 61 cents, producing a net price, plus waste, of \$6.73; to which is added stores expense for handling and checking material in the field of 4 per cent, amounting to 27 cents, producing a cost at the job for the material of \$7.00 per square of installed material. The installation cost is estimated at \$3.54 per square, producing a cost in place for corrugated galvanized iron at this location of \$10.54 per square, installed.

Q. Now, Mr. Biddison, these are relatively small structures, and not close to any thickly populated centers?

A. That is correct; this one is an isolated structure.

Q. It takes time to get workmen out to the field, and get them back?

A. That is correct.

Q. The amount of labor involved is not very great?

A. The amount of labor performed on the job is comparatively small.

Q. And for that reason would cost relatively higher than on a larger installation?

A. Materially so. Now, there is a bunch of miscellaneous material, such as hinges, hasps, lock, nails, priced at prices quoted by Rockwall Brothers Lumber Company excepting [fol. 638] for the lock; and for all these items a discount for cash payment has been deducted from the quotation, and an item has been added of 4 per cent to cover the field stores expense, or handling and checking materials. However, on those miscellaneous items no additional charge is made to cover their installation. Now, in addition to those materials for the structure itself, there is some gas pipe to coal stove priced at \$4.41. Now, this coal stove is connected to burn gas, and the materials in that piping installation to supply gas have been priced at prices for such materials as quoted by the manufacturers of such materials as of January 1, 1933; and to those prices has been added an allowance of 4 per cent on those materials to cover the handling and checking of those materials in the field; and to them has been added an allowance of 75 per cent of the material price to cover the installation of those materials in that small piping job.

Q. In your opinion is that a reasonable allowance?

A. It is.

* * * * *

[fol. 639] Q. Mr. Biddison, had you completed your explanation of the developed cost covering this pressure man's cabin included in the classification of property known as other production system structures?

A. Yes, and arrived at a total cost covering this structure of \$83.74, or a little over One Dollar per square foot for the structure, including this stove and the gas piping.

Q. Now Mr. Biddison, in the same manner did you develop your unit costs covering all other structures which are listed under the classification of property known as other production system structures?

A. Yes, in the same fashion for each structure, using quotations on materials from the town at which such materials could be obtained nearest to the location of the structure.

Q. And you carried your total developed cost for this classification of property over to the summary on page 2 of Volume 1 of Exhibit 28, in the total amount of \$9,450.29?

A. That is correct.

Q. Refer please to pages 276 to 295 of Volume 1 of Exhibit 28. What is detailed on those pages?

A. At page 276 is a recapitulation of the tools owned by the Lone Star Gas Company and used for the purpose of drilling, repairing and cleaning out wells. On pages 277 to 295, inclusive, this equipment is detailed by items and priced by items, the prices being the prices quoted by manufacturers or dealers in this class of equipment, as of January 1, 1933.

[fol. 640] Q. Did you use the lowest prices available to the company as of that date in your development of the adopted cost for each item?

A. Yes.

Q. And the total of the account appears to be \$95,764.08?

A. That is correct, and as to the groups between West Texas fields, Petrolia field, Oklahoma fields, and the Shamrock area, you will find the sub-total for the West Texas fields on page 280, and for Petrolia field on page 287; for the Oklahoma fields on page 290 and the Shamrock field on page 295.

Q. And did you carry forward to page 2 of Volume 1, Exhibit 28, your adopted total price or cost of \$95,764.08?

A. Yes.

Q. Now Mr. Biddison, this classification of property known as other production system equipment and consisting of drill repair and clean-out tools; was that property all property which was used and useful in the public service as of January 1, 1933?

A. Yes it is. It is equipment which is essential to maintain the wells owned by the company in operation.

Q. And does the company as of this date, to wit, June 18, 1934, have similar property and which would be appraised in a substantially similar amount?

A. I didn't get that question. (Question is repeated to witness.) You mean other than as here listed?

Q. Well, has there been any substantial change in the [fol. 641] general itemization of the property?

A. No, I am sure there has been no substantial change. Undoubtedly some of the items of this inventory have been used up and other items purchased, but the total of the amount would be substantially the same today as of the date of the appraisal.

Q. If we refer now to page 2 of Volume 1 of Exhibit 28, Mr. Biddison, does it appear that you have now discussed all of the items of physical property under the production system property classification?

A. That is true; we have discussed all items of direct structural cost in that group.

Q. Referring to page 2, Volume 1, Exhibit 28, the next item under production system property appears to be general supervision allocated, in the amount of \$148,596.00. What do you mean by general supervision allocated, and explain how the number of dollars were determined?

A. Of the total amounts which had been estimated for supervision of the construction of this property of the Lone Star Gas Company under a reproduction procedure, there are certain amounts which can be considered as departmental expenses, and have been so directly estimated by Mr. Ed C. Connor as pertaining specifically to departments. Now this item of \$148,596.00 is that portion of the supervision costs estimated to be incurred on this property which would be incurred specifically in connection with producing system properties. This figure has been specifically developed by Mr. Ed C. Connor and as to its complete development, I prefer to let him testify.

Q. The next item appearing under production system property is undistributed general costs, in the amount of \$1,404,643.25. Is that an allocation of general and undistributed costs to the production system property?

A. It is. On page 5 of Volume 1 of this valuation is shown the allocation of the total amount of undistributed general costs to the five main subdivisions of the company's property. On this page it is shown that out of \$50,813,515.57 of direct structural costs for the property embraced in this valuation, 15.2 per cent, or \$7,737,214.80 is embraced in the group styled production system property. Therefore, of the total undistributed general costs estimated by Mr. Connor to be \$9,241,074.00, there has been allocated to production system property 15.2 per cent of that amount or \$1,404,643.00, as shown as the last item, Undistributed General

Costs, in the group production system property on page 2 of this Volume 1 of the valuation. Now, page 5 also sets out in detail the allocation of this \$9,241,074.00 of undistributed general costs to the other main groups of property account.

[fols. 643-652] Q. State generally what is your basis of evaluation of the gathering system rights of way?

A. The rights of way for field lines has been estimated, in order to cover the expense of acquisition of the right of way and to cover the crop damages in construction, to be three times the consideration paid to the land owner for such rights of way.

Q. What consideration is estimated to be paid the land owner for the grant of the right of way across his premises?

A. This has not been set up here on the basis of a price per rod but is set up specifically at three times what the books show was paid to the land owner.

[fol. 653] The next item embraces the cost of ditching. On this line—this size line, 4-inch—the size of trench is computed as being 12 inches wide by 18 inches deep, and containing 5.5555 cubic yards per 100 lineal feet. The cost of excavation is estimated at .9756 dollars per yard, so that the cost per 100 lineal feet for trenching is 5.4199 dollars, or a little less than 5½ cents per lineal foot of ditch. This cost per cubic yard for this Chickasha field is the cost developed from a study of actual trenching for such lines in the Panhandle area in Texas, and modified to suit the insurance rates of labor in effect in Oklahoma. The actual cost for such trenching work in the Panhandle Fields of Texas was .9907 cents per cubic yard. The insurance rates [fol. 654] in effect in Oklahoma would make the cost per yard in Oklahoma for trenching in similar areas, where the same performance in man-days would be obtained, about 98½ per cent of the cost for Texas. That is the manner in which has been derived the cost per cubic yard of .9756 dollars per cubic yard. The next item is backfilling this trench. [fols. 655-656] Q. Does that consist of putting the dirt back into the trench after the line has been laid?

A. Either into it or on top of it. The volume occupied by the loose earth after the excavation is, of course, larger

than its original volume. In addition to that, there is the volume of the pipe line, so that all the earth excavated does not go back into the trench; it is piled up on top of the trench and allowed to settle, so far as possible, to maintain the trench at overflowing condition of the backfill. The backfill is computed on the same number of yards as the excavation, but at the rate of \$0.1644 per cubic yard, or a little less than sixteen and one-half cents per cubic yard. This figure for backfill is developed from a study of backfill work in the Panhandle field of Texas, where for 8,183.4 yards the labor and equipment charges, priced at rates existing as of January 1, 1933, amounted to 16.69 cents per cubic yard, or an amount, allowing for the difference in insurance rates between Oklahoma and Texas in the ratio of about ninety-eight and a half per cent for the total cost for doing such work, \$0.1669 per cubic yard for Texas and \$0.1644 per cubic yard for Oklahoma.

[fols. 657-661] Mr. Fitzhugh: Mr. Biddison, in giving your figures here going to make up the price installed, you didn't give an extension on backfill.

A. I thought I did. Maybe not. The rate on it is \$0.1644 per cubic yard, and the amount of it is \$.9133 per hundred lineal feet for backfill.

[fols. 662-672] Q. Please relate, generally, Mr. Biddison, how you arrived at the value of land in connection with the Transmission System Measuring Stations?

A. All items of land set out in this group of Transmission System Measuring Station Land on pages 69—

Q. Page 969?

A. Page 969, and further detailed on subsequent pages—

Q. Through 1049.

A. —up to page 1049, are priced at the price paid by the Lone Star Gas Company for the respective tracts, plus an estimate of the expenses of acquisition, which estimate is 15 per cent of the cost, with a minimum of \$25.00 per tract.

[fol. 673] Q. Now, having determined the quantities or the number of rods involved in transmission system rights of way, how did you develop your adopted unit costs?

A. The development of the unit costs for right of way is based upon an analysis of the costs of right of way acquired by the Lone Star Gas Company in the construction of a large portion of its system. The actual costs of right of way and recording for main lines and tap lines in Texas and in Oklahoma was \$.2776 per rod, while for gathering lines the cost was \$.2466 in both states.

Q. Now when you refer to the costs of rights of way, do you refer to the money paid to the land owner per rod in consideration of the execution of an instrument granting a right of way across his property?

A. I do. These figures I cited in both cases covered not [fols. 674-688] only that expense but the additional cost of recording the right of way instrument. The expenses incurred in making these right of way purchases was, for main and tap lines in both states, \$.1597 per rod, while for gathering lines that expense was \$.1062 per rod. An analysis of the cost of clearing rights of way preparatory to pipe line construction showed costs for main and tap lines in Texas of \$.2229 and in Oklahoma of \$.2180. These clearing costs for gathering lines in Texas were \$.2229 and in Oklahoma \$.2180. The costs of damages and of repairing and rebuilding fences was for main and tap lines in Texas and Oklahoma \$.2666, and for gathering lines in both states \$.2566. These produce sub-totals for main and tap lines in Texas of \$.9268 and in Oklahoma of \$.9219. For gathering lines in Texas, \$.8323 and in Oklahoma \$.8274. To these records of actual costs incurred, before applying them to the entire system of the Lone Star Gas Company, there has been added an item to cover contingencies of twenty per cent of those costs resulting in final figures adopted as the average cost over all for rights of way for the entire system, for main and tap lines in Texas of \$1.1122, and in Oklahoma of \$1.1063. For gathering lines in Texas, \$.9988, and in Oklahoma \$.9929.

[fol. 689] Q. Mr. Biddison, how many miles of natural gas pipe lines have you constructed or have been constructed under your personal supervision and direction?

A. Well, I have never really added it up. It is several thousand miles. The last job I was on embraced about sixteen hundred miles.

Q. About sixteen hundred miles?

A. That was the last job.

Q. Approximately how many miles of pipe line are included in the Lone Star Gas Company pipe line system?

A. Around thirty-five hundred miles.

Q. Speak up louder.

A. Around thirty-five hundred miles.

Q. Between thirty-five hundred and four thousand miles; is that correct?

A. Yes.

Q. Now, if we refer to page 3, Volume 1, Exhibit 28, Transmission Line Equipment appears as the next classification of Transmission System Property, and it appears to be evaluated by you in the amount of \$31,894,439.40?

A. That is correct.

Q. Now, where in Exhibit 28 do we find a detailed listing of the individual pipe lines in the Lone Star pipe line system?

A. Beginning on page 1983 of Volume 4, on this page is set out a summary by main pipe line divisions, showing the estimated reproduction cost of each of those divisions, and in subsequent pages to and including page 2474 of this [fol. 690] volume are shown the descriptions of each of the lines and the quantities of materials and the estimated reproduction cost for each line.

Q. Mr. Biddison, please, at the outset, in connection with this classification of property, relate to the jury in a general way the method that was pursued in the evaluation of transmission line equipment.

A. Quotations were obtained from the leading manufacturers of the materials used in the pipe lines. In each case these quotations were the prices as of January 1, 1933. The quantities of materials were specified in practically all the inquiries for quotations, so that the quotations could be made upon the basis of the quantities of materials actually required. The inventory which shows the quantities of these materials was prepared, as I have previously stated, by Mr. Steinberger. In order to arrive at the cost of installations—construction cost—analysis were made of the construction records of a large volume of construction by the Lone Star Gas Company. Cost records in sufficient detail and covering a sufficient amount of work were not available, however, to cover all phases of such construction work. For example, there was not sufficient data available

of the cost of constructing screw pipe lines to derive a figure of the laying cost from such data. For such lines, therefore, I have set up crews, with proper wages based upon wage scales being paid as of that date, with an estimate of the performance per day for such gang, to arrive at the laying cost of screw pipe. The same thing is true in regard [fol. 691] to what is called dresser coupled pipe. Now, since the Lone Star began accumulating data on construction costs in such shape as it could be properly analyzed they have not laid any large amount of either threaded or coupled pipe or dresser coupled pipe. They have laid, however, a large amount of welded pipe; they have done a large amount of ditching and of backfilling. The records of the costs of such work, as well as the painting of pipe, have been analyzed in detail for the determination of the unit cost to be used in this appraisal. That embraces the general method used in building up these values.

Q. What was the general method used in connection with the development of costs of excavation and backfill?

A. First, as to the classes of excavation, a determination was made, I believe, in 1929, not under my supervision, of the amounts of hand excavation and machine excavation and of rock work on this system, on such parts of the system as then existed. In a valuation prepared by Mr. Steinberger and Mr. Connor as of January 1, 1932, the data found from this investigation was revised and brought up to date. In preparation for this valuation, further investigations were conducted, particularly on lines acquired by purchase since the valuation of January 1, 1932. In addition to that, I conducted an investigation as to the relative amounts of hand work and machine work which would be done on the small tap lines, and in this manner the relative amounts of machine work and hand earth work and rock work on the various lines were determined. Now, the unit [fol. 692] costs for machine ditching were determined by an analysis of the amounts of time required for labor and the amounts of time required for equipment for such machine excavation work in a large volume of work performed by the Lone Star Gas Company. The study embraces the ditching of nearly two million feet—1,950,185 feet—or 368,548 cubic yards.

Q. When you say "feet" do you refer to lineal feet of pipe line construction?

A. I do. And it embraces both large lines and medium sized lines, embraces lines in which nearly thirty-five yards of earth were removed per one hundred lineal feet, and lines in which slightly under ten yards were removed per one hundred lineal feet of ditch. For the hand excavation there are two studies made, one of which embraced the excavation of those short sections on machine trench lines which would have to be skipped by a machine. This study was made on the data of work actually so performed by the Lone Star Gas Company and embraces a study of a little over ten thousand cubic yards. For the excavation by hand in those areas where machine work could not be done, or for stretches in excess of about two hundred feet, records of experience by the company in sufficient detail and sufficient quantity were not available, so such hand excavation work is estimated on the basis of the performance by a hand excavating crew, which I feel from my own experience in such excavation work is a reasonable performance. For rock excavation the unit costs used are developed from a study of the [fols. 693-705] amounts of labor, material and equipment required in excavation by the Lone Star Gas Company of 28,748 yards of rock.

Q. That is cubic yards?

A. Cubic yards; yes, sir. For backfilling or trench, the unit costs used are developed from a study of the quantities of labor and equipment used in the backfilling of over two and one-half million lineal feet of trench, embracing 464,616.7 cubic yards.

[fol. 706] Q. Mr. Biddison, you previously testified that as of January 1, 1933, you secured pipe quotations, or quotations on pipe from larger manufacturers of steel pipe, and in requesting those quotations that you furnished to the pipe mills a list of the quantities of pipe involved in the Lone Star Gas Company's system?

[fols. 707-713] A. That is correct.

Q. After having received those quotations from the pipe manufacturers, did you use the highest or the lowest of those quotations?

A. The lowest quotations have been used.

[fol. 714] Q. Now, Mr. Biddison, I will ask you if all of the material prices which are included in Exhibit 28 were compiled under your supervision and direction by Mr. Paul Richey?

A. They were. All inquiries were made by him at my direction, and the compilation of the data received from those inquiries in shape for application to the materials in the inventory were by him and his force under my direction. I was in touch with him throughout the preparation of such data.

Q. Is Mr. Paul Richey an experienced man in connection [fol. 715] with the procuring and applying of prices for materials such as those entering into the Lone Star Gas Company's system?

A. He is. He has had many years of experience in the selling of pipe and the materials used in pipe line and well constructions, and because he was familiar with the materials and the prices therefor, having had something like ten years' experience with one of the nationally known agencies for the distribution of pipe and fittings used in pipe line and well work, his services were secured in the preparation of this evaluation for the express object of properly pricing the materials used.

Q. Will Mr. Paul Richey be available as a witness sometime later in this case?

A. He will.

Q. And he will be able to testify as to the correctness of the material prices used?

A. Yes, sir.

Q. Mr. Biddison, how many separate pipe lines does the Lone Star Gas Company have in its pipe line system?

A. There are fifteen systems owned by the Lone Star Gas Company.

Q. And those fifteen systems are made up of a number of lines each, are they not?

A. They are. Take the "A" System, Line "A" being the main line of that system, and extending from the Shamrock Field to Petrolia, Texas. It has thirty-eight branch [fol. 716] systems, of which twenty are for the delivery of gas out of the main line into smaller lines, and the balance are for putting gas into the main line.

Q. Would you say that in all the Lone Star Gas Company

has, by letter or number designation, some several hundred different pipe lines?

A. That is correct.

Q. In the preparation of Exhibit 28, have you separately determined your unit costs for each one of those several hundred pipe lines?

A. I have.

Q. And do you have a detail of that development set forth in your working papers?

A. I do.

Q. And the resultant cost as so developed in detail has been carried into Exhibit 28?

A. That is correct.

Q. Now, Mr. Biddison, it would be manifestly impossible, if this trial is ever to end, for you to detail the unit cost development of each and every pipe line of the Lone Star Gas Company system—I suppose you concur in that view?

A. We would be here until after Christmas anyway.

Q. Mr. Biddison, in order that the jury may know the method of development of the cost of these pipe lines, I will [fol. 717] ask you to take one or more lines as typical and give a detail break-down of your development costs resulting in the total value which you have found.

A. Unless there is a suggestion of some other procedure, we might as well start with the first one—Line “A”.

Q. On page 1985, of Volume 4, of Exhibit 28?

A. Yes. On this page is set out, first, the amount in feet of pipe of the various sizes and weights, composing Line “A”, and priced at prices for such pipe as I have explained a few moments ago in quoting pipe prices.

* * * * *

A. It may be noted that the bulk of this line is composed of 18-inch pipe, plain end, weighing 53.223 pounds per lineal foot. That pipe is priced at \$2.7093 per foot. In the derivation of this figure of \$2.7093 per foot for this pipe installed in place, the first figure is the cost per foot of the pipe.

[fol. 718] Q. The first one shown on your appraisal, Mr. Biddison, is merely the over-all cost of the pipe installed?

A. That is correct. The cost per foot of this pipe f. o. b. mill is \$171.04. Applying two per cent cash discount and for freight at eighty-six cents per hundred-weight and

mill inspection at forty cents per ton, we have a net price f. o. b. railroad station for this pipe of \$214.4555 per one hundred lineal feet. To this I have added an allowance for stores expense or for handling and checking of materials in the field of one per cent. The first operation in connection with the installation of this pipe is the hauling and stringing of the pipe. This has been estimated to be at \$6.2270 per one hundred lineal feet.

Mr. Fitzhugh: Six what?

A. \$6.2270 per one hundred lineal feet. Now, this figure applies to pipe located in the State of Texas.

Q. Part of that line is in Texas and part of the line is in Oklahoma?

A. That is correct. Now, the length of haul on that is set up in a separate tabulation, which I will get here—This is based upon a weighted average haul on this line of six and one-tenth miles. I have previously explained how the average haul of various lines was obtained. The next item embraces the hauling and stringing of the dresser couplers used in connection with this particular pipe. Now, this is [fol. 719] estimated at \$.4567 per one hundred lineal feet.

Q. That is for the couplers that would be needed in connection with one hundred lineal feet of pipe?

A. That is correct, or at the rate of \$.1331 per coupler for hauling. The next item in connection with laying this particular pipe is painting, estimated at \$6.2173 per one hundred lineal feet.

Q. I believe you have already testified, Mr. Biddison, as to the general method of development of the painting cost?

A. The general method has been described. This figure for painting is a composite figure based upon the ratio between a figure of \$6.2245 per one hundred lineal feet in Texas and a figure of \$6.1865 for similar work in Oklahoma.

Q. Is that due to difference in insurance rates?

A. It is. The composite figure so computed is \$6.2173 per one hundred lineal feet. The next step is the estimate of the ditching costs, here set up at \$26.3838 per one hundred lineal feet, or about twenty-six and one-third cents per lineal foot of ditching. This is in turn a cost developed by weighing out the proportions in Oklahoma and Texas, the respective prices between the two States being \$26.6922 and \$25.0648.

Q. That is per hundred lineal feet?

A. Per hundred lineal feet. Now, those respective prices are developed from the figures of yards determined for such ditching. On this particular line the survey to which I have previously referred to determining the relative amounts of hand earth, hand rock and machine ditching [fol. 720] shows 87.62 per cent of the work to be machine ditched, 4.06 per cent would be hand work, and 8.32 per cent would be in rock. The ditch is estimated to be twenty-six inches wide by fifty-two inches deep, or to contain 34.7736 cubic yards per one hundred lineal feet. The unit cost for the machine ditching is at the rate of \$.407 per cubic yard, amounting to a weighted cost per yard of all excavation on the basis of 87.62 per cent of the \$.407, or \$.3566. The hand work on this line is estimated to cost \$2.138 per cubic yard, which constitutes 4.06 per cent of the yardage, so, that its weighted proportion is \$.0868 per cubic yard. [fol. 721]. Q. Is that hand work pretty well scattered through the System?

A. It is. It is in short sections. This job is largely machine work; it is what you call a machine ditched job; but, of course, there is always some hand work in connection with this machine work. Now, this price of \$2.138 per cubic yard is for sections very short in length,—simply handling those short pieces which a machine is bound to skip, even on a ditch largely done with machine work; and the cost for doing work on those short sections is, of course, higher than it would be if you had men strung out over stretches of several miles. Now, the rock in this line constitutes 8.32 per cent of the yardage. The rock work in the State of Texas, based upon a study of the records of performance by the Company's forces gives \$3.897 per cubic yard, while in Oklahoma the corresponding figure is \$3.826 per cubic yard. In this particular case the weighted figure applied to the cost per yard of excavating rock produces an average figure over the whole yardage of \$.3242, so that the total weighted cost per cubic yard of excavation on this 18-inch line is estimated to be \$.7676 per cubic yard, which applied to the 34.7736 cubic yards per 100 lineal feet of line produces a total cost of excavation of \$26.6922 per 100 lineal feet.

[fol. 722] Q. Of course, that is for both Texas and Oklahoma?

A. Yes. Now, that figure is a little less than 27 cents per lineal foot for the trench work on an 18-inch pipe line; and

comparing it on that basis alone, without going back into any of the details of it, I am sure that anybody familiar with pipe line construction work will realize that that is a conservative figure for ditching on a line of that size by any method. Now, I have explained the derivation then of the figure on page 1985 of \$2.7903 per lineal foot for this 606,804 feet of 18-inch 53.223 pound pipe, which is the largest item of pipe in that particular line. The derivation of the cost per foot in place for each of the other sizes and for the other weights of the same size is handled in precisely the same manner.

Q. Is this Line A a combination welded and dresser coupling line?

A. It is.

Q. Now, Mr. Biddison, will you pick out some line that is entirely welded—a solid welded line without dresser couplings, and relate to the jury your development of the unit costs?

A. Well, I can take a section of Line A, which is entirely welded, or I could take Line Second-B.

Q. All right; Line Second B is one of the major pipe lines [fol. 723] of the Company, is it not?

A. It is.

Q. Where does it extend from, Mr. Biddison?

A. From Petrolia to North Fort Worth.

Q. Or east of North Fort Worth?

A. Yes.

Q. And, roughly, what is the mileage of pipe included in that System—approximately 100 miles?

A. Close to 100 miles.

Q. And what is the size of the pipe line?

A. 20-inch. There is a little piece of 12-inch, and a little piece of 16-inch in connection with that line; but the line is practically all 20-inch line.

Q. Where does that appear in this Exhibit 28, Mr. Biddison?

A. On page 2020, which is a recapitulation of the B System, Line Second B is shown to be estimated to cost reproduction new \$1,828,421.66. Now, that line is set forth in more detail beginning on page 2037.

Q. Of Volume 4, Exhibit 28?

A. Yes. The 20-inch pipe in that line is A. O. Smith electric welded pipe in 30-foot joints. Of this pipe there was

517,632 feet. I have estimated it to cost, installed, \$3.2488, or for the pipe installed \$1,681,682.84. Now, as to the derivation of the figure of \$3.2488, we will start with the price of [fol. 724] the pipe itself. I have previously quoted the derivation of the price per foot for this pipe at the railroad station, f.o.b. Texas common points, as being \$253.534 per 100 lineal feet; to this there has been added for stores expense—that is, field handling and checking of material one per cent, or \$2.5353 per 100 lineal feet. The next item in the estimate is the cost of stringing pipe, estimated at \$6.34 per 100 lineal feet of pipe. This is for a weighted average haul of 4.6 miles at an average rate per ton of \$2.14. The next operation is aligning for welding, estimated at \$3.020 per 100 lineal feet. The next operation is painting, estimated at \$9.3167 per 100 lineal feet. The next operation is excavating trench, at \$24.0593 per 100 lineal feet of trench, or slightly over 24 cents per lineal foot. Now, for the development of that trenching cost, 90.1 per cent is estimated to be machine ditching, at a unit cost of \$.412 per cubic yard. .83 per cent, or less than one per cent, is estimated to be hand earth excavation, at a unit cost of \$.2138 per cubic yard, and 9.07 per cent is estimated to be rock excavation, at a cost of \$.3897 per cubic yard. The trench is estimated to be 28 inches wide by 51 inches deep, and to contain 32.4075 cubic yards per 100 lineal feet. The weighted cost per cubic yard [fol. 725] of excavation so obtained is \$.7424, producing the average cost per 100 lineal feet for excavation of \$24.0593 per 100 lineal feet.

Q. What page is that on?

A. 2037.

Q. All right.

[fol. 726] A. The next item of estimate for this line is for backfilling. This is based upon the backfilling of 32.4075 cubic yards per 100 lineal feet, at an average cost for backfilling on ditches of that size, of \$.1047 per cubic yard.

Q. Does it cost relatively less or more to do the backfilling on trenches for the larger sizes of pipe?

A. It costs less per cubic yard to do backfilling on the larger ditches than on the smaller size ditches, because you have more movements to make on the smaller ditches per cubic yard of backfill made, and the analysis of backfilling shows the cost on small lines in the neighborhood of 15 cents

per yard, while on large lines it gets down to around 10 to 10½ cents per yard. Now this backfill work at \$.1047 per cubic yard produces a cost per 100 lineal feet for backfill of \$3.3931. To this is added for cleaning up trench, \$.5604 per 100 lineal feet or a little over one-half cent per foot for cleaning up trench for construction work as finished. This is an operation which is always required. This produces a total cost of backfill of \$3.9535 per 100 lineal feet. The next operation is laying and testing at \$14.20 per 100 lineal feet. That is the next operation set up the way this estimate is set up. The operations of welding I will discuss after I have established the unit cost figure I am working up to now. Now, this figure of \$14.20 per 100 lineal feet for laying twenty inch pipe welded is the figure derived from a study of the performance in laying twenty inch pipe by the Lone [fol. 727] Star Gas Company and it is in effect in this instance a pricing out of the labor and material and equipment prices as of January 1, 1933, and the quantities of labor and equipment and miscellaneous materials that were actually used in the construction of the line. In other words, we are applying to the construction of this line the unit costs which were derived from a study of its actual construction in this particular instance. This results in a total charge for installation, exclusive of welds, of \$63.4248 per 100 lineal feet, to which has been added an allowance for omissions and contingencies of two and one-half per cent, or \$7.9240 per 100 lineal feet, resulting in a cost in place, exclusive of the welds, of \$324.8828, which is the figure used on page 2037.

Q. Now, were the welds separately evaluated, or rather the cost of making the welds?

A. They were and there is set out on page 2037 the number of 20 inch welds, which is 17,427. They are estimated to cost each \$6.9302 or \$120,772.60. I want to comment here that contract rates for welding on lines such as this in 1929, 1930 and 1931 would have been at rates nearly double this cost per weld and that the Lone Star Gas Company in welding this twenty inch Line Second B achieved labor performances which have seldom been equalled in welding work, and therefore the cost per weld on all large size welds, being based upon a study of the actual costs including this line, are lower than I have encountered in my own experience.

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Q. Have you used as a basis for your development of [fol. 728] welding costs the actual experience of the Lone Star Gas Company; so far as performance is concerned?

A. I have.

Q. And particularly have you applied that as a basis for the determination of your welding costs on Line Second B?

A. I have. These welding costs so derived are down in the neighborhood of ten cents per lineal inch of weld, or less, whereas contract rates when work of that nature was being done in any volume ran in the neighborhood of fifteen cents per lineal inch of weld or more.

Q. You therefore believe that the welding costs which you have used throughout your appraisal are fair and reasonable?

A. I know they are.

Q. Now of course, included in Line B and all other lines which are set forth in Exhibit 28 are miscellaneous items of gate valves and fittings and other material?

A. Yes.

Q. In each case did you apply the lowest prices for that material current as of January 1, 1933?

A. I did.

Q. Giving effect to all discounts which would be allowed to large purchasers?

A. I did.

Q. Now you have previously testified, Mr. Biddison, that you used the manufacturers' quotations on steel pipe as of January 1, 1933, or rather the lowest quotations which were given by the manufacturers as of January 1, 1933, and that [fol. 729] you furnished to the manufacturers a list of all of the pipe which would be included in the Lone Star Gas Company's system?

A. That is correct.

Q. I will ask you whether in your opinion pipe could have been bought, as of January 1, 1933, at any price lower than the prices quoted by the manufacturers?

A. I believe in the case of an actual purchase of pipe, the pipe might have been purchased slightly under those prices which were quoted to us as of that date. However, on the other hand, I am also of the opinion that the placing of an order of the size and for the tonnage involved in the Lone Star Gas Company system would so stimulate the pipe prices that those prices would not hold very long if this amount of business became available to pipe manufacturers.

Q. What has been the trend of pipe prices for the last year, Mr. Biddison?

A. Very definitely upward?

Q. Are pipe prices as of this date substantially in excess of the pipe prices adopted by the Railroad Commission of Texas in its opinion and order at issue in this case?

A. Very much so.

Q. Are pipe prices current as of today substantially in excess of the pipe prices which you have used in connection with your appraisal, that is Exhibit 28?

A. They are.

Q. To the extent of some very sizable amount of money? [fol. 730] A. Yes, and I have a tabulation prepared, although I do not have it at hand right at the moment, which will show that amount of money.

Q. Now, Mr. Biddison, in the same manner that you developed your costs for pipe installed on Line A and Line Second B, did you make a determination of the installed cost of all other pipe lines which are included under the classification of property known as transmission line equipment and included in your Exhibit 28?

A. I did.

* * * * *

[fol. 731] Q. The next item appearing under transmission system property appears to be general supervision allocated, in the amount of \$127,242.00?

A. It is.

Q. What does that represent?

A. That represents the portion of the supervision expense to be incurred in connection with the construction of the properties which may be said to be departmental and incurred solely for that department, embracing departmental supervision expense and has so been computed by Mr. Ed C. Connor and the derivation will be explained by him.

Q. If we refer to page 5, Volume 1 of Exhibit 28, do we find an allocation of the undistributed general costs of the transmission system property?

A. That is correct, and the derivation of the figure of \$6,200,760.65, as shown on page 5, is made in the same fashion as I have previously explained for similar determinations in connection with production system property and gathering system property.

Q. And the allocated undistributed general costs to the [fol. 732] transmission system property, amount to \$6,200,-760.65?

A. That is correct.

* * * * *

[fol. 732a] Reporter's certificate to foregoing transcript omitted in printing.

* * * * *

[fols. 733-734] Q. What method did you use in evaluating [fols. 735-747] Compressing System Leaseholds including Improvements, shown at page 3, of Volume 1, Exhibit 28, evaluated at \$29,985.13?

A. Precisely the same manner as for land.

Q. Did you depreciate those leaseholds in accordance with their expired term?

A. Should not have done so, and I think did not on these leaseholds. The leaseholds for compressing stations were not depreciated.

Q. And you evaluated them in the same manner that you evaluated the land owned in fee by the Company; that is, by taking the actual cash cost of the leasehold to the Company, plus fifteen per cent of the cost of acquisition, recording, and so forth?

A. That is correct.

* * * * *

[fol. 748] Q. The next item appearing under Compressor Station Property appears to be General Supervision Allocated, in the amount of \$84,271.00.

A. It is.

Q. How was that determined, and what does it represent?

A. That figure represents that portion of the supervision cost to be incurred in the reproduction of a property of this size which could be definitely assigned to this particular department—Compressor Station Department. The [fols. 749-757] figure was developed by Mr. Ed. C. Connor in detail, and will be explained by him in detail.

Q. Now, the item of Undistributed General Costs appearing on page 3, Volume 1, Exhibit 28, in the amount of \$905,625.25, was determined in what manner?

A. In the same manner as I have previously explained in regard to other main subdivisions of property, and as set out on page 5 of Volume 1 of this exhibit. It is the allocation to this group of property of 9.8 per cent of the Total Undistributed General Costs estimated by Mr. Connor for the entire property, the 9.8 per cent being arrived at on the basis that the \$4,994,213.25 of direct costs of Compressing System Property is 9.8 per cent of the \$50,813,515.57 of direct costs of all property.

* * * * *

[fols. 758-759] Q. Mr. Biddison, the next item of property appearing in the summary on page 4, Volume 1, Exhibit 28, is automotive and construction equipment, evaluated by you at \$423,717.82. I assume that that evaluation is of course upon the basis of the automotive equipment being new?

A. It is.

Q. As a matter of fact, a great deal of the automotive equipment of the company has been in use for some time?

A. Yes.

Q. But you have applied here the reproduction cost new of that automotive equipment?

A. That is correct. The prices applied are the prices for that equipment as of the time at which the equipment was acquired.

* * * * *

[fol. 760] Q. On page 3605, in connection with the summary of the general telephone system property, there appears to be allocated general supervision in the amount of \$60,237.00?

A. That is right. That is the amount developed by Mr. [fol. 761] Ed C. Connor and will be developed and explained in detail by him, this being the amount which applies to the general telephone system.

* * * * *

Q. The next item under general system property appears to be undistributed general costs in the amount of \$453,-

812.63 ... No, I seem to be in error, Mr. Biddison. The next item appears to be final engineering records, evaluated at \$765,690.35. What are the final engineering records?

A. The final engineering records include the final engineering maps prepared by the company engineers after the completion of an installation. They are not the drawings prepared for the making of an installation but they are the final inventory records, and consist of field sketches from which are made up detailed drawings on paper or tracing cloth, from which are made ink drawings or tracings, and from which are made blueprints. These maps are kept currently up to date and their cost is not a part of the construction cost of property; they are made after [fol. 762] the construction is done. The costs shown herein have been estimated in detail by Mr. Connor from an inventory of the records in that department, and they may be completely explained by him.

Q. The next item of undistributed general costs appears to be evaluated in the amount of \$452,812.63 in respect of the general system property. If we refer to page 5 of Volume 1 of Exhibit 28, do we find the allocation of the undistributed general costs to the general system property?

A. Yes, in the same fashion as previously explained for the other main divisions of the property account.

Q. Now Mr. Biddison, referring again to page 5 of Volume 1, Exhibit 28, do you show that the direct costs of the physical property of the company is \$50,813,515.57 upon the basis of reproduction cost new?

A. I do.

Q. Now what do you mean by direct costs?

A. I mean those costs which in common accounting are charged directly to specific pieces of property. They exclude those costs which are so general in nature that they can hardly be said to be incurred for specific items of property or specific classes of property, but are incurred for the property as a whole. These direct costs exclude in general such items as preliminary and organization expense, engineering and supervision during construction, except such portions of such engineering and supervision expense as may be classed and identified as departmental [fol. 763] expense. It excludes administrative and legal

expense for the job as a whole, and it excludes interest during construction for the job as a whole.

Q. Does it also exclude taxes during construction?

A. It excludes taxes during construction, yes.

Q. Now the undistributed general costs referred to on page 5 of Volume 1, Exhibit 28, will be testified to in detail by Mr. Ed C. Connor, who cooperated with you in the preparation of this appraisal?

A. That is correct.

Q. And by undistributed general costs, you mean those costs which you have just identified as preliminary and organization costs, administrative and legal expense, interest during construction, engineering and supervision and taxes during construction?

A. That is correct.

Q. The total of the undistributed general costs evaluated and set forth in Exhibit 28 appear on page 5 to be \$9,241,074.00?

A. That is correct.

Q. When taken in conjunction with the direct costs of the physical property of the company, what total amount do we have?

A. We have a total amount of \$60,054,589.57.

Q. And is that the grand total shown on page 4 of Volume 1 of Exhibit 28?

A. It is.

Q. Now, does the figure of \$60,054,589.57 include any allowance for the business which the company has attached and developed?

A. None whatever.

[fols. 764-765] Q. Or nothing for what is commonly known as going value or going concern value?

A. It includes no allowance whatever for that, and no allowance for working capital.

* * * * *

[fol. 766] Q. In all cases, in the development of your costs of physical property did you apply labor prices which were current as of January 1, 1933?

A. Yes; the minimum labor rate as of that date, being .35 cents per hour for this class of work.

Q. For common labor?

A. Yes.

Q. And since January 1, 1933 has the trend been upward or downward in relation to rates of pay and wages for labor of various kinds?

A. There has been a definite increase in the base rate for labor and in the rates for several grades of skilled labor.

Q. Mr. Biddison, are you familiar with an exhibit which has been offered in evidence here by Mr. E. A. Steinberger, it being an evaluation of the undeveloped leaseholds of the Company for which no reserves have been calculated by Messrs. Dunn and Kendrick?

A. I am generally familiar with it.

Q. You know that that exhibit discloses the valuation of those leaseholds based upon the actual cash cost to the Company of the leaseholds?

A. I do.

[fol. 767]. Q. Are the undeveloped leaseholds of the Company well selected from the standpoint of its operations?

A. They are, in my opinion, and that opinion is formed after having made an investigation of that matter previous to the date of this evaluation.

Q. Mr. Biddison, in your experience have you had occasion to buy and sell leaseholds in the Mid-Continent area and in the Southwest, generally?

A. I have.

Q. Are you generally familiar with prices paid by willing buyers to willing sellers for developed gas reserves?

A. I am.

Q. And are you familiar, generally, with the prices paid by willing buyers to willing sellers for undeveloped gas reserves?

A. I am.

Q. Would you say that the undeveloped leaseholds, for which Mr. Steinberger showed a total value of \$893,291.28 represented leaseholds which were reasonably needed by the Company in connection with its current operations?

A. Certainly; and the amount of such leases is small relatively, both in acreage and in the amount of money, to be held by a property of this size.

Q. Would you say that the book cost was a minimum or maximum of their fair value?

A. I would say a minimum, because included in that group of leases are properties in Gray and Carson counties, [fol. 768] Texas, whose value per acre, or whose value per

thousand cubic feet of gas in the ground is in my opinion fully equal to a thousand cubic feet of the same gas, or an acre of the same kind of leases in Wheeler County, which acreage has been priced and evaluated by Mr. Dunn on the basis of having been developed.

Q. Mr. Biddison, did you ever hear of a natural gas company operating upon the scale that the Lone Star Gas Company operates which did not carry a substantial amount of undeveloped leaseholds?

A. No.

Q. Would you say that the acreage and the value of the leaseholds which are undeveloped and owned by the Lone Star Gas Company is substantially less than that carried by other major natural gas companies operating in the United States?

A. In proportion to the investment, and in proportion to the volume of business, the amount carried by the Lone Star Gas Company is relatively very small, and is barely sufficient to act as an insurance policy that they may buy gas at rates which will not be prohibitive.

Q. Can these leaseholds be utilized in the future by the Company as a source of gas supply?

A. Yes.

Q. And may these leaseholds be regarded in the nature of working capital which the Company has tied up in connection [fol. 769] with current operations?

A. I think that is a good way in which to conceive of it—being parallel to working capital.

Q. Are you familiar with an exhibit which has been offered in this case styled Defendant's Exhibit 31, being an appraisal of gas reserves of the Lone Star Gas Company, testified to by Mr. D. A. Huley?

A. I am.

Q. Are you familiar with the volumetric determination of the gas reserves of the Company as made by Messrs. J. H. Dunn and Frank E. Kendrick, and identified in this case as Defendant's Exhibit 30?

A. Generally so, I am, yes.

Q. Do you believe that the evaluation of leaseholds so determined by Mr. Huley in connection with Exhibit 31 is upon a reasonable basis?

A. I do.

Q. Please state the reasons for that conclusion.

A. Well, you can take the amount of reserves which has been estimated by Mr. Dunn, testified to by him, and price them out to the various fields at rates for gas in the ground which I feel sure would be fair valuations of gas in the ground, and derive thereby figures for the developed leases equal to or in excess of the figures derived by Mr. Huley in the method in which he derived them.

Q. Have you had occasion to act for buyers or sellers in [fols. 770-772] the matter of the sale or purchase of developed gas reserves?

A. I have.

Q. In this general territory?

A. I have.

Q. When were those sales made and what was the price used or price paid per thousand cubic feet of developed gas reserves?

A. Well, these sales I have in mind were over a period from 1921 to 1929 at which gas reserves were sold on the basis from slightly under, in some few cases, one-half cent per thousand feet in the ground, up to prices in excess of one cent per thousand feet in the ground. As a general proposition, the larger the block of acreage the higher the price per thousand cubic feet in the ground.

Q. Are the leases, both developed and undeveloped, of the Lone Star Gas Company well located in relation to the Company's property and business?

A. They are.

Q. Is the entire public service plant and property of the Lone Star Gas Company, in your opinion, well designed and well conceived?

A. Well designed, well conceived, well maintained, and well operated. It is an excellent property from all viewpoints, as I see it.

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[fol. 773]. Cross-examination.

Questions by Mr. Fitzhugh:

Q. Mr. Biddison, turn to the first item that appears in your first volume—that, I believe, is page 13, of Volume 1, Gas Well Equipment, Chickasha Field, Casing Lap Weld, 12½-inch, 50 pounds per foot, quantity 62 feet, unit cost of \$2.4718 a foot.

The Court: Raise your voice a little, Mr. Fitzhugh. I can't hear you up here.

Q. Give, if you will, Mr. Biddison, how you arrive at that unit cost.

A. The price on that, as was furnished to me by the Pricing Section, on 12½ inside diameter, 13-inch outside diameter, 50 pounds per foot, lap weld, regular casing, \$2.4718 per foot, net, at destination.

Q. You say that price was furnished you by the Pricing Section?

A. Yes.

Q. Who composed your Pricing Section for this item of property?

A. Mr. Paul Richey is in charge of that Pricing Section, and in this work works under my supervision.

Q. Is Mr. Paul Richey available for cross-examination?

A. He is not today, but he will be. If you want something further on the price of that casing I can dig out something [fol. 774] further for you. He can do it with greater facility than I can.

Q. The cost you have given us represents the cost delivered f. o. b. Texas common points?

A. Yes.

Q. Do you know what the price is at the factory, or f. o. b. factory?

A. Well, I think I can get that for you, too.

Q. That is the only way we can check up on it, isn't it?

A. No; I have explained a way you can check up more readily.

Q. We can't check up on discounts or freight without getting the base price, can we?

A. This price is derived from the Oil Country Tubular Goods price sheet. The list price per foot is \$2.95; the discounts are 10, 5, and 2 per cent for prompt payment, giving a net discount, or a net ratio of net price to list price of .8379, and producing a net delivered price for this casing of \$2.4718.

[fol. 775] Q. Now, when you say, Mr. Biddison, that the discounts are ten, five and two you mean that you have a base discount of ten, a preferential discount of five and a cash discount of two; is that right?

A. Substantially, yes. I mean specifically that you have first ten per cent discount applied, then five per cent applied

to the remainder, and then two per cent discount to the remainder for prompt payment of the invoice.

Q. Now, have you used the same discount wherever casing is found throughout your appraisal?

A. For casing, yes.

Q. Does the Lone Star Gas Company, Mr. Biddison, get just as good discounts as any other buyer?

A. I am not sure whether they do or not. I think probably they do.

Q. Is there any reason why they should not get better discounts, being larger purchasers than most of the other buyers?

A. Well, if that were true, then the largest purchaser would pay the lowest price. If the Lone Star Gas Company happened to be the largest, they would get the lowest price.

Q. Yes, sir.

A. But there are other large purchasers.

Q. Is there any larger gas operator than your company here?

A. Not a larger gas company, but the largest gas company would not be largest purchaser of casing.

Q. Is this a discount which would prevail for a small purchase of casing or a large quantity, or would there be any difference?

A. This is a discount which would be available to a purchaser buying in volumes comparable to that bought by the Lone Star Gas Company. I am not certain, but for the smallest purchasers the five per cent discount would not be available.

Q. Well, do you mean, Mr. Biddison, that it is a discount that the company would get on ordinary purchases over a yearly period, or do you mean it is a discount that would be available if they were buying casing for reproduction new properties?

A. I think it is a discount that would have been available to it January 1, 1933, for either purpose.

Q. All right. Now, this quotation, you say, came from the Oil Country—

A. Oil Country Tubular Goods price sheets.

Q. Who puts that out?

A. Well, such sheets are put out by the National Tube Company, Youngstown Sheet & Tube Company, Jones & Laughlin.

Q. How about the Continental Supply Company?

A. Yes, they do, too.

Q. Now, as a matter of fact, as of the date of your appraisal, Mr. Biddison, wasn't your company getting a discount on this class of casing and on other types of casing of different sizes where the discount available to your company and actually paid by it was ten, ten and two instead of ten, five and two?

[fol. 777] A. I don't think so.

Q. On yesterday, Mr. Biddison, a day telegram was sent, June 18, 1934: "Continental Supply Company, Dallas, Texas. Please confirm discounts of ten and ten as of date January first, thirty-three, on mill shipments of casing to large consumers." Signed, Railroad Commission of Texas, Gas Utilities Division. Upon today we have the following telegram: "Railroad Commission of Texas, Gas Utilities Division, Austin, Texas. Retel yesterday relative discounts on casing. Stop Our records show we were quoting as of January first Nineteen thirty-three extreme price of ten and ten per cent off list on large lots of casing. The Continental Supply Company." Now, Mr. Biddison, if that quotation given to us is correct, isn't that the quotation that your company would now have available to it for purchases of casing?

A. No. I think that situation is somewhat garbled.

Q. I want to show you the telegram, so you will be sure to understand what is in it. (Telegram handed to witness.)

A. Well, this telegram does not state what the ten and ten off list was applied to at all. The telegram you read to me, to which that is a reply, indicated that the ten and ten that it referred to was ten and ten off of material prices.

Q. Mr. Biddison, isn't this a quotation that anybody familiar with casing prices would understand?

A. You might understand it if it had not been for the telegram you sent to them, the way you explained it.

[fol. 778] Q. Don't you know it is ten and ten off the list price?

A. No, I don't know it, because it does not say it is.

Q. Isn't it a fact that this telegram says, "We were quoting as of January first, 1933", which is the date of the quotation sheets sent out by the Continental Supply Company, and show as to what discounts apply?

A. No, it does not. Anybody that can read English can see it does not.

Q. Well, what kind of list do you think does apply?

A. Well, that is what I would like to know.

Q. Well, will you verify and report back to us as soon as possible, Mr. Biddison, the exact discounts that your company paid on any purchases of casing made from January first, 1933, to the present time, if any such purchases were made?

A. I will endeavor to get that information.

Q. Do you know how much casing there is of this size used in the wells of the company?

A. No, not offhand.

Q. Have you any idea, then, how many dollars and cents are tied up in this five per cent discount, provided we are entitled to that correction?

A. No, not at this time.

Q. Can you approximate it?

A. No, not at this time. It would not amount to much.

Q. Well, in case this same discount applied to all your casing, would you know approximately how much we would be entitled to?

[fol. 779] A. No, not offhand. I would be able to determine that amount.

Q. How did you find, Mr. Biddison, the quantity that you show for this first item, sixty-two feet?

A. That quantity was determined by Mr. Steinberger in compilation of the inventory of materials. Now, that question can better be directed to Mr. Steinberger, since it is an inventory figure.

Q. You don't vouch for that figure?

A. Well, I have had the figures of this gas well equipment checked, and I believe them to be right. Of course, I didn't go and measure it down in the well hole myself.

Q. Well, how could you make that check?

A. From the records of the material down in the well.

Q. Did you check this item?

A. Not personally, no. I had it checked.

Q. Well, are all these quantities of casing taken from the actual records of the company?

A. Yes.

Q. There is no possibility for an error, then, as to omissions and contingencies, is there?

A. Yes.

Q. So far as quantities of casing are concerned?

A. Yes.

Q. How do you explain that?

A. There is always a possibility of omissions and contingencies in any inventory, unless you are counting dollars on deposit; I don't know of anything else you could count on with exactitude without the possibility of error.

[fol. 780] Q. If your records are correct, don't the records show for each well the amount of casing in each well?

A. They do as long as they can be determined for such lines, yes.

Q. Well, is there any likelihood that there are errors in the records of the amount?

A. Certainly.

Q. Well, isn't the record just as likely to be an overstatement of the amount as an understatement?

A. I think not.

Q. Wouldn't you be just as justified in making a deduction for a duplication that might be in your exhibit where you allowed too much of a type of property or too much pipe in a well than in a case where you have included too little?

A. No, sir.

Q. You are sure of that?

A. I am sure of that; yes, sir.

Q. You could not possibly be wrong in having too much in the appraisal—it is bound to be that you have too little?

A. The probabilities are that in any inventory of material some material will be missed in the inventory.

Q. Yes, sir. And where you have a large amount of property under ground, Mr. Biddison, there is a very large chance of putting in more than is actually there?

A. No, sir.

Q. You are positive of that?

A. Yes, sir. There is a chance of missing material that can't be seen nor handled.

[fol. 781] Q. Now, the first valve that appears in your appraisal, the very first one, where does it show?

A. I don't know, sir. I will have to look it up.

Q. Well, it will probably be on the first page, won't it?

A. Yes, on the first page.

Q. On page 13?

A. The first one appearing is Crane, four inch, one thousand pound test, No. 23, double disk, non-rising stem, 25.1094.

Q. How did you find that unit cost?

A. The list price of the valve f. o. b. Chicago is \$70.00; the discount is 49, 25, 10 and two per cent cash discount, resulting in a net price f. o. b. Chicago of \$23.6159 each. The amount of freight at a freight rate of 71 cents per hundred pounds is \$1.4935, resulting in a net cost at railroad destination of \$25.1094 each. The valve has been priced at that unit cost, or for one, in round figures, \$25.11.

Q. What was the figure for freight, please, sir?

A. \$1.4935.

Q. And what was the valve cost f. o. b. Chicago?

A. \$70.00.

Q. Well, after the discount it was twenty-three something?

A. \$23.6159.

Q. What was the last well drilled in this field?

A. I don't know.

Q. In the Chickasha field?

A. I don't know.

Q. That is the field that the inventory starts out with, doesn't it?

[fol. 782] A. Yes, sir.

Q. Did you make any effort to find out?

A. No.

Q. Do you know what they had to pay for the property that went into the last well drilled up there?

A. No, sir.

Q. Then you didn't look at the actual records of the company to make that statement?

A. Certainly not.

Q. You were not even interested in it, were you?

A. No.

Q. Now, if I am correctly informed, Mr. Biddison, the last well in that field drilled by your company was the E. P. Warren No. 1, appearing on page 45. This well, I am told, was finished in December before your appraisal was completed as of January—that is, I mean this well was completed in December preceding that January. Your total cost shown for that well is \$13,094.83, isn't it?

A. It is.

Q. That is an appraised value throughout, is it not?

A. It is.

Q. It hasn't got a thing in the world to do with the actual cost of the well, has it?

A. No, sir; it is exactly what it is labeled; the estimated reproduction cost of the well.

Q. Now, I will ask you, Mr. Biddison, if as a matter of actual fact the records of your company do not show that this well cost the company, and this cost includes every [fol. 783] fitting, valve, and other piece of property shown on your inventory, the amount of \$12,600.56, as compared with your \$13,094.83?

A. Well, I don't know anything about it.

Q. And, in addition, the \$12,600.56 includes capitalized on the books of the company interest and overheads in the amount of \$549.65?

A. Well, that may be your statement. I don't know anything about it.

Q. And the figure comparable to the interest and overhead just mentioned has been otherwise included in this appraisal itself in the amount of \$13,094.83; isn't that true—that is, this thirteen thousand item does not include one cent of interest or overhead, does it?

A. It does not include interest, it does not include general and undistributed overhead costs.

Q. How about administration and legal expenses?

A. That is one of the general undistributed costs that is not included in the figures showing specific items of property in this appraisal.

Q. Now, on this same well there are fittings which you have included in your appraisal as a lump sum amount of \$72.05 for the lot?

A. Yes, sir.

[fol. 784] Q. How did you find that figure?

A. I am afraid I can't give you that fittings statement just at the moment. I will have to look that up and give it to you later. That is a list of fittings which has been priced out in detail, and I will get it for you.

Q. All right. Now, Mr. Biddison, you and Mr. Griffith have very kindly offered to go into every figure that you have got in your whole appraisal, for the benefit of the State in this case, and we have here skipped in our questions over property from page 13 to page 45. I don't suppose you have any objection to us making that skip, do you?

A. None whatever.

Q. And spot-checking your appraisal, so to speak?

A. No, none whatever.

Q. All right; on the same page where you show under fittings, installation of fittings in the amount of \$155.56, that amount includes an allowance for stores, does it not?

A. It does.

Q. What is the allowance for stores?

A. Four per cent.

Q. You mean four per cent of the total installation cost?

A. No, four per cent of the material cost.

Q. So of the \$155.56 what part is stores? In dollars and cents, I mean.

[fol. 785] A. The amount of stores expense is \$134.43.

Q. So that the remainder in the amount of \$21.12 represents the labor involved in the installation of fittings?

A. That is correct.

* * * * *

A. I can now read you that list of fittings, Mr. Fitzhugh, constituting that lot of fittings, if you desire it.

Q. Well, wait just a second, until we finish with this item.

A. All right.

Q. Now, the \$134.43 for stores expense includes both handling and checking, is that true?

A. Yes, it includes the accounting for materials through the warehouse and also on storage lots.

[fol. 786] Q. How much of that cost is checking?

A. I don't know. There is no separation made of that in an accounting.

Q. Well, does it include any hauling?

A. No, sir, it does not.

Q. Just what does it include? Explain what your stores expense is.

A. It includes all of the expenses of the field storekeepers, their automobile expenses, their salaries, the rental on store yards; all expenses in connection with the accounting for material in the field.

Q. Well, now in finding the amount of the stores expense, how did you go about it?

A. I applied four per cent to \$3360.65 of material.

Q. I understand that, and I think I understand, too, that you got the four per cent out of the abundance of your experience; but how do you know that four per cent is a correct amount to apply for stores expense?

A. Out of the abundance of my experience and out of the history of the cost of that kind of work for the Lone Star Gas Company.

Q. Well, you have worked on considerable construction work, you say, Mr. Biddison. There is a great deal of difference between supervising the building of a piece of construction and keeping track of all the costs, isn't that right? [fol. 787] A. Yes, indeed.

Q. Where you build 1600 miles of pipe line, which I believe you say you have built some time in recent years. On that piece of construction work, you did not keep all the books, did you?

A. Certainly not.

Q. That is properly a cost accountant's work, isn't it?

A. Certainly.

Q. All you did was to go out there and see that the men were kept working smoothly and that the pipe was properly put in,—isn't that right?

A. Not by any means.

Q. Did you check up on all the costs?

A. Why, no, not personally, but I had it done currently as the work progressed. The cost people worked under my supervision.

Q. Where was that 1600 miles of construction of which you spoke?

A. Louisiana, Mississippi, Alabama, and Georgia.

Q. And was it 1600 miles of continuous construction?

A. No, it occupied two years time

Q. All sorts and different sizes of pipes?

A. From four to twenty-two inch.

Q. Can you pick out any particular section of, or the whole business—as a matter of fact, can you give any piece [fol. 788] of construction you have ever worked on where you know the actual stores expense?

A. Well, I can't cite anything of that sort to you now, no; but I have had stores expense figures analyzed for me for ten or fifteen years past.

Q. Did you make any written records of cost studies of the sort that Mr. Steinberger, I believe, has made for your Company?

A. Yes, I have made them——

Q. In construction work?

A. —and have had them made.

Q. Have you got them with you now?

A. No.

Q. We would like very much to see them.

A. Well, I don't know whether I could produce them now or not. I had a study made several years ago of stores expense on the Dallas Gas Company's property and the County Gas Company's property, showing stores expense in excess of four per cent.

Q. And you are willing to testify now, and try to make this jury believe it, that on the work you have done in the past you have had an actual stores expense of four per cent of the cost of materials?

A. Yes, sir, on miscellaneous materials; certainly I am.

Q. But you don't cite us a single example to prove it, do you?

[fol. 789] A. I just cited you one, and also the records of this Company on the construction work which they have done.

Q. Can you give us the figures of a construction job, on the cost of materials involved, the labor involved, and your stores expense detail?

A. Which construction job do you refer to?

Q. Any construction job.

A. Why, I think I can produce for you the studies on both the properties of the Lone Star Gas Company and—

Q. No, I am talking about your personal experience now—this abundance of experience you have had—

A. Why, no, I haven't gone off with the records—

Q. —upon which you are drawing off, in the past?

A. I haven't gone off with the records of the people by whom I have been employed. They are part of their equipment and stayed in their files; but I know what has been going on in connection with those concerns. I have had studies made, not only of stores expense, but many other things in analyzing construction costs.

[fol. 790] Q. Talking about the same well still, Mr. Bid-
dison,—about how long did it take to drill this well?

A. I don't know.

Q. Well, how long would it ordinarily take?

A. Well, for a completion job, that well could under favorable circumstances be done in some place between thirty and sixty days.

Q. Now, the actual record on this well, according to our investigation, shows that it was actually completed in twenty-four days. Does that sound possible, bearing in mind that it is located in the Chickasha Field?

A. It sounds possible, but it is improbable that that was the time from the beginning of operations to the completion of operations; it sounds more probable that that was the actual drilling time.

Q. Well, that might be, but suppose that that is the case, that would be about the length of time that this property would be on the ground up there, wouldn't it?

A. No.

Q. Would you need to have your casing strung out up there for several weeks or months before the well was started?

A. You probably would have the bulk of it there at the time the well was started.

Q. Well, approximately what is the length of time that some check would have to be kept of the casing and tubing, which seems to form the major part of the cost of the well, [fol. 791] and the small amount of fittings and valves?

A. Well, an account might have to be kept of that material anywhere from thirty days to a year or two, on parts of it. It depends upon how long some of it laid in stores.

Q. Well, does it appear reasonable to you, Mr. Biddison, that where there was only about \$150.00 worth of small fittings, and that that is the only property to be kept track of, except the tubing and casing, that there would be \$134.43 spent for stores expense in keeping track of that property?

A. Yes; and in proving that reasonableness I would like to cite that in the analysis of the stores expense incurred on about fifty wells involving near \$300,000.00 worth of casing, nearly \$19,000.00 of other equipment, and over \$12,000.00 of miscellaneous material, or approximately \$331,000.00 of total materials, the stores expense was \$30,000.00 and more, or in excess of nine per cent. of the total material cost on this approximately \$331,000.00 worth of material; whereas, in this estimate there has been applied as stores expense on comparable material only four per cent.

Q. Who made that study?

A. That study was developed in detail by Mr. Steinberger, from an analysis of work performed by the Com-

[fol. 792] pany in drilling wells in the Panhandle and West Texas Fields.

Q. Do you have that study before you?

A. I do, in summary form.

Q. Now, give a breakdown of the \$30,000.00 which you say was stores on that amount of construction.

A. I have no breakdown as to the items of expense on that with me. I have the amount in each particular field of stores expense.

Q. Well, what I mean is, how do you know what that stores expense includes?

A. Because that is what was included as stores expense on the payroll sheets and on the cost analysis sheets.

Q. Well, was it detailed in any way?

A. It was on those analysis sheets. I don't have the complete figures here. I have a summary of it only before me. As a matter of fact, it is common in oil field practice for some companies to charge a stores expense of ten per cent on all materials.

Q. Isn't it a fact, Mr. Biddison, that that stores expense or the stores expense included in that study is really a misnomer, in that it applies to the salary and expenses of a storekeeper kept in the field during the operation of the field, the expenses of which storekeeper and the keeping of the store were charged as operating expenses currently, and not capitalized on the books of the Company?

[fol. 793] A. Whether it was capitalized on the books of the Company or not, it represents stores expense that was incurred in the handling of material in the drilling of these wells, no matter what was done with it.

Q. Well, you wouldn't include in a reproduction cost appraisal, would you, Mr. Biddison, a capital cost, if the Company had never in the past recorded that as a capital cost?

A. I don't care how the Company recorded it in the past; it is a cost to be incurred in the reproduction of the property, it is a cost proper to be set up as part of the reproduction cost. The question is not here what the Company did do some time in the past; the question is what it would cost as of the date of this valuation to perform certain acts and to produce certain properties.

Q. All right. You are not going to reproduce something now in connection with a reproduction appraisal, would

you, Mr. Biddison? Wouldn't it represent some item of property or some service which has been compensated for in the past through operating expenses; never cost the Company a dime, never cost the Company a penny, and which expense is still being charged to operating expenses?

A. I would set up in a reproduction cost valuation all [fol. 794] items of expense which would be incurred in a reproduction cost—in a reproduction program. Now, what happened in the Company's past history in that respect, I don't know. It doesn't make any difference to me. The question is what would it cost, as of the date of this valuation, to reproduce this property. Now, some of the costs that have been analyzed from the Company's construction and operation work in the past furnish information from which unit costs may be developed as construction cost units. It doesn't make any difference whether those costs were incurred on construction or operation, if they are properly applied to the situation which we are now dealing with, namely, the cost of reproducing the property as it existed on January 1, 1933.

Q. All right. But, Mr. Biddison, isn't the real justification for the applying of value by a reproduction cost method the fact that it tends to show the amount of investment of the Company in Public Service Property?

A. That is the reason for it, to show the value of that investment.

[fol. 795] Q. You wouldn't be doing right, would you Mr. Biddison, to include in an appraisal of that sort and for that purpose items that have been expense items in the past, which have never been capitalized and which were never regarded, even by the company, as investment items?

A. Why certainly you would. It wouldn't make any difference what they had done with it in the past. If that expense would be incurred in reproduction, it is a proper item to set up. Now what they have done with their income and with their expenditures in the past has nothing to do with the value of this property. If they charged something to operations that should have been charged to the capital account, that is simply a mistake in accounting methods and has nothing to do with the value of the property.

Q. You realize, Mr. Biddison, in a rate case when you are talking about value, you are talking about an unusual kind of value, do you not?

A. No.

Q. You don't recognize there is any difference in a rate base value and value in the ordinary sense?

A. No. The rate base is supposed to be present fair value, as I conceive it.

Q. All right; whether you are right or wrong on that matter, this much is true, if I understand you correctly Mr. Biddison: that there is absolutely no relation in the method which you have used in compiling your exhibit and in the value you have found in it for public service property, [fol. 796] and the history of the company in the past?

A. Yes, there is a very definite relation.

Q. In what way have you taken into consideration the history of the company?

A. In so far as it was possible, the unit costs used in this reproduction estimate have been derived from the history of construction of similar property by the company. Now, there is that direct relation.

Q. It is a matter of fact, isn't it Mr. Biddison, that the property of the Lone Star Gas Company started out rather small in 1909, and has been built by progressive steps through the years from then up until now?

A. That is correct.

Q. The properties were not built all in one step, were they?

A. No.

Q. There wasn't one great big combined construction of four thousand miles of pipe line?

A. No, there was not.

Q. You have in your appraisal, though, considered that the entire group of properties, all lines, would be reproduced as of one construction job, have you not?

A. Yes.

Q. Does that follow historically what has happened, as a matter of fact?

A. No. Historically this property has never been reproduced. We are talking now about reproducing it new, as of January 1, 1933.

Q. The only way you would say that you might have in any way taken into account the history of the company in the preparation of your exhibit, is in considering some of the actual studies, or rather the studies of actual costs incurred in some small bits of construction work done by the company?

A. I think that is substantially correct, yes.

Q. You say you have that \$72.05 worth of fittings on this same well now?

A. This bunch of fittings amounting to \$72.05 consists of steel casing-head, $6\frac{5}{8}$ by 2 by 2 by 1, at \$14.14. One set 2 x 1 x 4 casing clamps, \$5.19. One set $8\frac{1}{4}$ x 1x6 casing clamps, \$8.57. One set $12\frac{1}{2}$ x 1 x 6 casing clamps, \$9.87. One rotary drive chain two feet long, \$2.78. One four inch dresser collar leak clamp, \$1.31. One eight inch ditto \$2.52. One $8\frac{1}{4}$ casing coupling, \$2.40. Two $\frac{1}{4}$ inch pipe couplings, 5 cents. Two 1 inch Crane malleable ells, 9 cents. Four 1 inch Vogt high pressure malleable ells, \$1.71. One 4 x 8 nipple, threaded both ends, 38 cents. Two 1 x 12 ditto, 16 cent. One 1 x 8 ditto, 6 cents. Three 1 x 6 ditto, 12 cents. Two 1 x 2 ditto, 4 cents. One $\frac{1}{2}$ by 2 ditto, two cents. One $\frac{1}{4}$ x 4 ditto, 2 cents. One 1 x 6 nipple threaded one end, 4 cents. One $8\frac{1}{4}$ x $6\frac{5}{8}$ swedge nipple, \$1.77. One 4 x 2 ditto, 65 cents. Three 1 inch jet nipples, \$4.14. One 2 inch bull plug, 37 cents. 2.75 feet of 1 inch 1.7 pound threaded and coupled pipe, 19 cents. Two $\frac{1}{2}$ inch cast iron pipe plugs, 2 cents. One $\frac{1}{4}$ inch steel pipe plug 14 cents. [fol. 798] One 2 x $\frac{1}{2}$ malleable reducer, 14 cents. One 1 x $\frac{1}{2}$ malleable reducer, 6 cents. One 1 inch syphon gauge, \$1.96. One $\frac{1}{2}$ inch Mueller stop cock, brass, 33 cents. One $6\frac{5}{8}$ x $6\frac{5}{8}$ x 4 steel 500 pound tee, \$10.25. One 1 inch high pressure malleable tee 26 cents. One 2 x $\frac{1}{4}$ inch special tee, 54 cents. One 2 x 15 x 1 special tee \$1.08. One 1 inch ground joint union, 45 cents. One $\frac{1}{4}$ inch collar weld, 23 cents.

Mr. Griffith: Does that give a total of \$72.05, Mr. Bidison?

A. It does.

Q. (Mr. Fitzhugh) Does the original inventory show whether these fittings are steel fittings, cast iron fittings or malleable iron fittings?

A. Well, the original inventory describes them substantially as I read them off. There are one or two cases in which I shortened up the description somewhat.

Q. Well, there is considerable difference between malleable iron and cast iron fittings, are there not, of the same type?

A. Generally so, yes.

Q. You have in this lot of fittings quite a number of cast

iron fittings. How do you know those are properly classified as cast iron?

A. Well, I had fittings on these wells checked to find out what they were.

Q. Well what description in the original inventory is there to show a description such as to make a certain type [fol. 799] of fitting, even though they were checked?

A. Well, as I say, the description is not absolutely as complete as it could be in all cases, but the materials which I read to you from this list are pretty well detailed, as to description.

Q. Do you have the original inventory on this well?

A. I have a copy of it right here before me, from which I am reading.

Q. Do you have the fittings listed in that inventory as you have read them off here?

A. Yes.

Q. Are they listed as cast iron fittings in the cases where you read off cast iron fittings here?

A. Where I read cast iron they are listed as cast iron, and where I read malleable, they are listed as malleable.

Q. Well, really didn't you just have a lot of fittings, one lot, on each original inventory, and then you worked out this list of fittings to apply to it the unit prices you show?

A. No, we had a complete inventory of each and every item in the original inventory, and then instead of typing it all out, we grouped it as one lot of fittings, just exactly the reverse of what you suggested.

Q. Take the first nipple where you apply a cast iron price.

A. I do not apply a cast iron price to any nipple.

Q. Well now, let's see. Here is one 4 x 8 nipple, threaded both ends, at a price of 38 cents. What kind of a nipple is that?

A. It is a pipe nipple, made out of pipe, and threaded on both ends.

[fol. 800] Q. That is a steel nipple, isn't it?

A. It is a steel pipe nipple, yes.

Q. Further down in the list you have one 6 $\frac{5}{8}$ x 6 $\frac{5}{8}$ x 4 steel 500 pound tee, a cost of \$10.25. Where did you find that \$10.25?

A. Well, that tee is specifically designated here as Walworth Sigma steel.

[fol. 801] Q. Well, just let that go, Mr. Biddison; it probably don't amount to much anyway.

A. I have before me a list of Walworth prices on fittings in a heavier class than that, but I have not yet located the Walworth prices on fittings in that weight. I think there was a substitution made, according to this. I have a reference in here to a substitution for that class of material, the prices not having been originally obtained, for the use of a price by Crane Company on extra heavy cast steel fittings.

Q. You mean a Crane valve?

A. No; a Crane fitting—a cast steel fitting. This particular one is priced here at \$10.25; but it does not quite correspond to the Crane price, because the Crane price is \$10.42, as referred to in the substitution.

Q. What is the Crane material as to type and pressure?

A. Cast steel T screw, Series 30, 800 pounds, oil, water, or gas working pressure, their figure 764 D.

Q. Do I understand, then, Mr. Biddison, that where you have this particular item listed as a Walworth, you are really giving it a Crane price, or the other way around?

A. I think there is a substitution, because I do not find a Walworth price for this fitting. I may be able to locate it later.

Q. Aren't all these fittings as they appear in the equip- [fols. 802-803] ment of the Company in the field painted over?

A. Yes; practically all of them are painted over.

Q. And wouldn't there be the usual amount of dust and grime over them when they went to check them for the purpose of making an inventory?

A. Those showing above the ground are not covered with dirt and grime.

Q. Well, they have a coat of paint on them?

A. Yes.

Q. How could a man making an inventory, no matter how carefully he looked at the installation, tell whether the fitting was a malleable, cast iron, or steel fitting?

A. You can ordinarily tell a cast iron and malleable fitting by the shape.

Q. Well, how could you tell who made it?

A. As to who made the fittings, you can tell who made them by the mark on them. If it were a Sigma steel fitting, it would be so marked.

Q. Are all fittings so marked?

A. Not all; but most fittings carry a distinguishing mark by which they can be identified.

Q. But on this particular item, you have applied to what had a 500-pound pressure an 800-pound pressure price?

A. No; it is not that exact price. I have not found yet what the precise substitution was there.

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[fol. 804] HAL C. DYER, a witness for defendant, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Griffin:

Q. State your name, please.

A. Hal C. Dyer.

Q. Where do you live, Mr. Dyer?

A. I live in Dallas.

Q. In what business are you engaged?

A. I am in the general contracting business.

Q. How long have you been engaged in the contracting business?

[fol. 805] A. Well, in 1922 I took a job with the Henger and Chambers Construction Company of Dallas as cost accountant and general office clerk. I stayed with this firm about four years. During the time I was with this firm I handled all their cost accounting for the different construction jobs they had under way. In 1925, I believe it was, I took a job with the Jopling-Marshall Construction Company. My duties with this company were estimating—that is, preparing estimates and costs and bids on construction jobs. In 1927, this company, which was a copartnership, was dissolved, and Mr. Jopling of that firm and myself organized the Jopling Construction Company. We operated as the Jopling Construction Company until the early part of 1933, at which time our association ceased, and I entered the contracting business under my own name—Hal C. Dyer, Builder—and I am engaged in that business at the present time.

Q. In that work have you had occasion to make estimates of costs, to supervise the construction of, and to actually build some large construction projects?

A. Yes, sir; I have.

Q. Name some of the major contracts on which you have made estimates of costs, or where you have supervised the

construction, or was the superintendent of construction on the job?

A. Well, on the Crazy Hotel Building in Mineral Wells, I estimated that job, submitted a bid, and got the job on [fol. 806] the low bid, and I handled the buying, the purchasing of materials, and the awarding of sub-contracts for practically all the items that entered into this building. That job represents an investment of approximately a million dollars. We had the general contract—the figure was a little less than a half million. On the San Antonio Express Publishing Company building, in San Antonio,—a job that represents an investment of nine hundred thousand I believe, our Company had a contract for \$486,000.00. I prepared all the cost data and estimates and bid on this job. I built the Dallas Gas Building in Dallas, the general contract for which was something over five hundred thousand dollars. I prepared the estimate on that job and secured the job by competitive bidding; and I was on that job as general superintendent during the course of construction. I submitted a bid on this building here, but we did not secure the contract.

Q. Do you mean this Travis County Court House?

A. Yes, sir; this court house. If I recall, we were about fifth bidder on this job. I also prepared a bid and submitted it on the State Highway Building—on Congress Avenue, I believe it is. I was sixth or seventh bidder on that job. The most recent job I have bid and built was the Chattanooga post office. Our firm did not have the complete contract on this job. We had a sub-contract—we had the [fol. 807] steel and the concrete work. We had also a sub-contract for a post office in Meridian, Mississippi.

Q. When you spoke of Chattanooga a moment ago, you meant Chattanooga, Tennessee?

A. Yes, sir.

Q. Would you say, as a result of your experience, Mr. Dyer, that you are familiar with costs of construction and methods of construction, in connection with the construction of office buildings in this territory?

A. Yes, sir; I believe that I am.

Q. Now, Mr. Dyer, yesterday, or the day before, Mr. P. M. Biddison, a witness in this case, identified pages 3518 and 3519 of Volume 6 of what is known here as Exhibit 28 in this case as being a description of your work in connection with the valuation of the general office building of the Lone

Star Gas Company in the city of Dallas; and in his testimony Mr. Biddison said that the estimate of the reproduction cost new of that building in the amount of \$321,437.63, represented your estimate of that reproduction cost new; was Mr. Biddison's statement correct?

A. That is correct.

Q. And you did prepare an estimate of the reproduction cost new of the general office building of the Lone Star Gas Company in the city of Dallas?

A. Yes, sir; I did.

[fol. 808] Q. You spoke a moment ago, Mr. Dyer, of having made the estimates of costs and having been general superintendent in connection with the construction of the Dallas Gas Company building. I will ask you if that is a large office building which adjoins the Lone Star Gas Company building?

A. Yes; it is. It is on the north of the Lone Star Gas Building, in the same block. In fact, the Dallas Gas building is only 13 feet from the Lone Star Gas Company building.

Q. Now, Mr. Dyer, will you please relate to the jury in your own words and in a general way the method you pursued in arriving at the estimate of your reproduction cost new of the office building for the Lone Star Gas Company?

A. Well, the first thing I did was to spend about four or five days going through the building to get the building clearly in my mind as to just how it was finished, and the type of different materials used in the building. After I had made this general survey I went to the original architects who prepared the plans of this building and secured a set of the original plans. I took these plans and from them made a detailed estimate of every item that I could find on the plans and prepared a bid just as though I were going out to submit a bid in competition for the job. I took each item separately—excavation, concrete, form work, masonry, plastering, painting, and all the different elements that entered into the building. When I came to the heating and [fols. 809-813] plumbing items, not having a detail knowledge of this branch of the work, but only a general knowledge, I went to the Martin Brothers Heating and Plumbing Company, who are recognized as one of the leading heating and plumbing companies in the state. I had them prepare this estimate on the heating and plumbing. I checked their estimate, and with the general knowledge I have, I know their estimate to be correct. On the electrical work I went

to the Superior Electrical Company, and had them prepare the estimate on the electrical work. On the elevators I went to both the Otis Elevator Company and to the American Elevator and Machinery Company, and they gave me an estimate on the elevator work.

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[fols. 814-826] Cross-examination.

Questions by Mr. Fitzhugh:

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[fol. 827] Q. So that your estimate as it now stands, Mr. Dyer, consists partly of work that you would do yourself, and in a number of items of work that you would sub-contract?

A. That is right, yes, sir.

Q. Now, you have allowed for yourself a contractor's profit, have you not?

A. Yes, sir.

Q. In what amount?

[fol. 828] A. Eight per cent.

Q. And you intend that that eight per cent would be over and above all the actual costs of construction?

A. Yes, sir.

Q. You have also allowed, in the matter of the sub-contractors' parts, a profit by the sub-contractors, have you not?

A. Yes, sir.

Q. What amount do you figure that they would get?

A. Their profit is included in the prices that they gave me.

Q. I understand, but you figure that they will make as much on their contracts as you will make on yours, at least, don't you?

A. Well, that all depends, Mr. Fitzhugh; I don't know just what margin of profit the different sub-contractors figured.

Q. Well, it is normal to expect a sub-contractor to expect to make eight per cent on his sub-contract, isn't it?

A. Yes, sir.

Q. And you probably as general contractor allowed yourself a little margin for safety there, didn't you?

A. Yes, in bidding on a job I would do that.

Q. Now, besides the over-all profit that you figure for yourself as general contractor, in the amount of eight per cent, and which appears in your estimate in the amount of [fol. 829] \$22,766.38, you have allowed a further allowance of three per cent for contractor's overhead?

A. Yes, sir.

Q. Are you, in general, familiar, Mr. Dyer, with the way that the exhibit prepared by Messrs. Biddison, Connor and Steinberger has been prepared?

A. No, sir, I am not, Mr. Fitzhugh. I haven't heard any of their testimony and haven't seen any of the exhibits.

Q. You wouldn't be able to say, then, would you, whether your contractor's overhead includes the same sort of charges that are included in their general overheads in their exhibit introduced in this case?

A. No, sir.

Q. Perhaps you had better explain, then, Mr. Dyer, just exactly what expenses your contractor's overhead includes.

A. Well, if you had a contractor on this job the owner would require a bond. The bond premium is one per cent of the total contract. That bond premium or one per cent of the total cost is included in my overhead of three per cent. During the course of construction we have to have a day watchman and a night watchman, ice, fuel, temporary barricades, have to have temporary offices, temporary toilets; and then workmen's compensation insurance, public liability insurance, and contractor's contingency insurance. From my experience in the building business I [fol. 830] have found that these items on a job of \$250,000.00 will average three per cent. On smaller jobs it will be higher than three per cent. The overhead item is to take care of all the incidentals that a contractor must meet that do not go into the building proper.

Q. What does the contingency insurance that you just mentioned cover?

A. The contingency insurance—contractor's contingency liability, I believe, is the term of it—it covers the insurance on our sub-contractors. For instance, if we would make a sub-contract with a transfer company to haul all of our brick and tile and steel from the railroad yard to the job, we would carry a contingency policy to protect us against any damages that he may do in performing his duties under his contract with us; even though he has his own public

liability policy that protects him, we have a policy to protect us.

[fol. 831] Q. Now, Mr. Dyer, you also have an allowance for contingencies, do you not?

A. Yes, sir.

Q. That amounts to five per cent of the total job cost, approximately \$13,000.00, does it not?

A. Yes, sir.

Q. Now, what are the contingencies that that \$13,000.00 is supposed to cover?

A. That is to take care of the owner when he changes [fol. 832] his mind. I have never built a building yet but when we got about half way through, the owner decided that he wanted some changes made—it's happened in every case that I have had anything to do with; and it is on an average of from five to ten per cent, is what the changes or extras, as they call them in contracting, amount to.

Q. Doesn't your contract that you usually make with a builder—that is, with a prospective builder, usually include a clause that takes care of any changes of mind that the prospective owner may have?

A. Yes, the contract provides for it.

Q. An additional compensation to the contractor over the general contract for those changes?

A. Yes, sir.

Q. Now, in this case, Mr. Dyer, you have a building that is not to be built, actually, but one that actually exists and where you know whether the owner had any changes made from the original plan,—is there any reason why you should include in a valuation of that building an allowance for changes in mind that can't possibly take place?

A. Well, my estimate is based, Mr. Fitzhugh, on a reproduction cost. In other words, if you would start to build that building to-day you would have that item.

[fol. 833] Q. I understand; but the building has already been built and if anybody ever changed his mind about the building of it, that has already occurred. Now, do you have to take care, in the valuation of that building, of any allowance for contingencies in such a large amount, for a thing that couldn't possibly happen?

A. It would happen, Mr. Fitzhugh, if they would build the building again.

Q. But you would receive additional compensation, wouldn't you?

A. Yes, sir.

Q. If there were any changes?

A. Yes, sir.

Q. Now, besides all these things, you make a still further allowance of an architect's fee of five per cent of total cost?

A. That is right.

Q. So that after you had found the total amount for the job cost, to sum up the whole matter, Mr. Dyer, you allowed five per cent more for contingencies, three per cent additional for contractor's overhead, eight per cent for your contractor's profit, or contractor's fee, and five per cent for the architect's fee?

A. Yes, sir, that is right.

Q. That is in addition to all of the profit and margin of [fol. 834] safety you allowed yourself in the work—

A. That is right.

Q. And in addition to those costs you also put in for owner's representative on the job, nine months at \$250.00 per month, for a total cost of \$2250.00?

A. Yes, sir.

Q. So to sum the whole matter up, you found the total job cost for the building to be \$259,951.18, plus owner's representative for nine months at \$250.00 per month, \$2250.00, plus contingencies, five per cent of job cost, \$12,997.56, plus contractor's overhead, three per cent, \$8255.96, plus contractor's fee, eight per cent, \$22,676.38, plus architect's fee, five per cent of the total cost, in the amount of \$15,306.55, to get your total value of \$321,437.63?

A. That is right, Mr. Fitzhugh.

Q. Now, there is one other item that I don't believe we have referred to. What are the items you said you failed to depreciate, besides the excavation?

A. I don't have a copy of that, Mr. Fitzhugh. I believe it is—the per cent opposite each item there is listed.

Q. The items where you show no percentage depreciated will be the items that you failed to depreciate, would they not?

Yes, sir.

Q. Those are excavation, precast concrete piling, con-[fol. 835] crete, wood forming, metal forms, open centering,

A. No, sir, that is the excavation. In a concrete frame the form work, the metal forms and the open centering is the false work that you put up and put your concrete and then wreck.

[fol. 836] Q. You also show no depreciation on carpentry work?

A. That is right.

Q. Or reinforced steel, and I believe that completes the list, doesn't it?

A. Yes.

Mr. Griffith: By carpentry work, Mr. Fitzhugh, do you mean the carpentry work on the foundation forms?

Q. I don't know. Just what does that mean, Mr. Dyer?

A. That is the rough carpentry work. The rough carpentry work is not a permanent item in the building.

Q. What do you figure, Mr. Dyer, is the total life of a building such as the Lone Star Gas Company building?

A. I couldn't answer that, Mr. Fitzhugh, because I am not old enough to where I have seen a building that stood up very long of that nature. We have not been building that type of building but for the last twenty years.

Q. It has been built now how many years?

A. I don't recall when the first unit was built, but the second unit was built in 1927, I believe.

Q. The first unit was built back about 1923, wasn't it?

A. 1923 or '24; about that time, yes.

Q. So part of the building has been in existence about 11 years?

A. I judge about that time.

Q. And part about seven years?

A. Yes.

Q. Now why do you figure, Mr. Dyer, that there has been [fol. 837] no depreciation of excavation?

A. Mr. Fitzhugh, the excavation is the cost of digging the hole in the ground, and as long as that hole is in the ground serving its purpose, there shouldn't be any depreciation on it.

Q. Is there still a hole there?

A. Yes.

Q. The hole is filled up now, isn't it?

A. No, sir.

Q. It has a building in it?

A. No sir, the building is over it, Mr. Fitzhugh. The hole is still there.

Q. Well, doesn't the depreciation occur on the excavation to the same extent that it does on the building generally?

A. Well, you take your total job and that is what I have done. I have shown a depreciation on the total job of approximately nine per cent; but the excavation, item for item, the excavation should not carry any depreciation.

Q. Well, this much is true, Mr. Dyer, that when you put men to work and excavate in order to get a hole in which to put your foundation, and the base of your building, that afterwards when you pour your concrete and set the foundation and put the building in it, that the excavation is a lost cost so far as that building is concerned, except as it serves the purpose of that building only?

A. That's right. It serves the purpose as long as it is there.

Q. Now when the building wears out, Mr. Dyer, the excavation is gone?

[fol. 838] A. It would not be serving its purpose; that's right.

Q. And to the same extent that the building generally is depreciated or its life is shortened, the life of the excavation and the value of that excavation is shortened to the same extent, isn't it?

A. Yes.

Q. Don't you think then in all justice, Mr. Dyer, to your evaluation, that you should depreciate your excavation in the same amount that you have depreciated the building generally?

A. Well, Mr. Fitzhugh, my total net worth there, under the column of net worth—I am giving excavation approximately a nine per cent depreciation. I depreciated the entire building approximately nine per cent.

Q. Yes, but you did not depreciate the excavation any in arriving at the total of the items. Here is the way I think you have figured it, and see if you agree: Suppose you had taken all the depreciable items or what you term the depreciable items, and found a certain per cent condition for those items—say 85 per cent?

A. Yes.

Q. Don't you think then that you should have applied that back against excavation and some of these other items?

A. No, sir.

Q. Which you have included as non-depreciable items?

A. No, you have to take it item for item. That would not represent a true depreciation on your reproduction cost.

[fol. 839] Q. Where you have in your appraisal reinforcing steel as non-depreciable, you don't mean to say, do you Mr. Dyer, that the steel in the building can not possibly rust or deteriorate in any way?

A. Well, taking it for an item itself, Mr. Fitzhugh, the steel today is just as good as it was when it was put in there, because it is serving the same purpose now as it was the day the building was completed, and as long as it serves its purpose there should be no depreciation on it, but if you look at the building as a whole I have taken approximately nine per cent of that item.

Q. Well is the fact that an item of property is still serving its purpose the basis of your determination of its depreciation or lack of depreciation?

A. I didn't understand you, Mr. Fitzhugh.

Q. I say is the consideration that an item of property is still able to serve its purpose the thing that determines the depreciation or lack of depreciation of an item?

A. Well, if it is serving its purpose as well as it did the day it was erected, and looks as good, and in the same state of preservation—

Q. Well, that is true of the whole building, isn't it? The whole building is serving its purpose, just as well as it did the day it was erected?

A. Yes, that's right.

Q. And if you used that sort of a criterion, Mr. Dyer, you would have to give the entire building a 100 per cent condition, wouldn't you?

A. The building is serving its purpose 100 per cent, but it is not in the condition it was when it was built.

Q. That's right, and that is also true of the reinforcing steel, isn't it Mr. Dyer?

A. No sir. Only as you consider the building as a whole, there is a depreciation of approximately nine per cent.

Q. Well, grant, Mr. Dyer, that the reinforcing steel may give the appearance of showing no deterioration and is still holding up the building, it is true that it is bound to have suffered some small amount of wear and tear?

A. I don't think so.

Q. It has had the stress of a very heaving building on it for some eleven years, now?

[fol. 842] Q. In the bids which you say you have recently submitted, Mr. Dyer, in Chattanooga and other places, and where you included the five per cent allowances for contingencies—or where you said you did not include a five per cent allowance for contingencies, you have nevertheless made an inclusion of that amount in this appraisal, did you not?

A. I didn't understand your question, Mr. Fitzhugh.

Q. Well, I gummed it up a little bit. I say you said a moment ago, if I understood you correctly, that in the bids you recently made for buildings in Chattanooga and other places, you did not include in those bids a five per cent allowance for contingencies?

A. No, sir.

Q. But you did include that in this appraisal?

A. Yes.

[fol. 843] P. McDONALD BIDDISON, a witness for the Defendant, being recalled, testified further upon

Cross-examination.

Questions by Mr. Fitzhugh:

Q. Mr. Biddison, on yesterday you were shown a telegram sent by the Railroad Commission of Texas to the Continental Supply Company, as well as a reply from the Continental Supply Company to the Railroad Commission?

A. Well, that is hardly correct. You read to me a telegram which you stated was sent to the Continental Supply Company, and you showed to me what purported to be their reply.

Q. All right; the telegrams just mentioned referred to discounts available to your company or available to anyone, for that matter, on casing, in which the discount was shown to be ten, ten and two per cent. On yesterday I believe you said you thought our telegram as originally sent was am-

biguous, and the answer was uncertain in its application. [fol. 844] Now, on yesterday we sent another telegram to the Continental Supply Company, asking them to make definite to what the discounts referred to in their previous telegram were to be applied, and today we have this telegram:

“Railroad Commission of Texas, Gas Utilities Division, Austin, Texas.

Retel yesterday casing list to which it referred was our oil country list number twenty-four dated August fifteenth 1932.”

Now, I show you here, Mr. Biddison, a copy of the List No. 24 styled on the outside, “List prices, the Continental Supply Company, St. Louis”, and ask you to look at this list and see if it does not show the casing referred to on yesterday, and the prices for such casing which were in force as of the date of your appraisal?

A. I don't know whether this sheet of list prices is the one in effect January 1, 1933, or not.

Q. This does show to be the list No. 24, August 15, 1932?

A. It does.

Q. Now you have in your work papers there some place, that information, have you not?

A. This sheet to which you are referring is not the list—

Q. Is your book with the yellow sheets a price book?

A. It is.

Q. Doesn't it show at the top the book from which the prices were taken?

A. It shows the source of the prices, yes.

[fol. 845] Q. And what does it state on the top of your sheet is the source of the prices you have?

A. The one I have on casing here does not show the source of the prices. I do not know which particular one this was taken from, right now. My list prices on this sheet are apparently the same as the List Number 24 you have there, as of August 15, 1932.

Q. Well, Mr. Biddison, if you should consult with Mr. Steinberger or with some of the others of the men that helped you to make this, can you not find out whether or not this is the list actually applicable as of the date at which you made your appraisal?

A. The list which you have cited there containing the prices that are shown in this price list, is apparently the

same list of prices as the one I used on regular lap-weld casing. Now, to find the specific list from which these actual prices were taken, I would have to refer that back to Mr. Richey, who is not here today.

Q. So all these casing prices, then, in the last analysis, will have to go back to Mr. Richey?

A. For details of that nature, yes. I don't think it makes much difference which one it applies to, because I think the lists were the same for all companies.

Q. The base prices shown in the list which you just checked are the same, though, are they not?

A. For lap welded regular casing, they are the same. I [fol. 846] checked those.

Q. And your prices reflect a discount of ten, five and two, instead of ten, ten and two?

A. My prices reflect a discount of ten, five and two.

Q. Instead of ten, ten and two?

A. That is correct.

[fol. 847] The Court: As I understand the method of computation, that means a difference of four and a half per cent on the whole value?

A. I haven't worked that out.

Mr. Fitzhugh: No; it would be different from that.

The Court: I want to get that straight in my mind, if I am wrong. The difference between ten and ten, and ten and five would be four and a half per cent of the whole. If I am wrong, correct it.

A. Well, in the one case the total discount would be—

The Court: There is a little difference—the difference between ten and ten, and ten and five, is four and a half. Now, if you are going to take—

A. The difference between those two sets of discounts would produce net difference in total discounts of, in the one case 26.21 per cent, and in the other case 30.62 per cent.

The Court: Now, what is the difference?

A. The difference is 4.41 per cent.

The Court: I wanted to get at the difference.

Q. At the close of yesterday's session, we were talking about the E. P. Warren No. 1 Well—on page 45, the first one there—the drilling costs of this well, as shown, had a drilling cost of \$4.2992 per foot. Of that amount, I believe you said \$2.75 was contractor's drilling price?

A. That is correct.

[fol. 848] Q. The remainder then is the Company's cost?

A. That is correct.

Q. Now, what is the cost to the Company made up of?

A. Well, the cost of rig, cost of water and fuel supply, the hauling of casing, the loss of materials——

Q. Do you have the amounts by items?

A. Yes. Cost of rig, \$.3941; water and fuel, \$.303; hauling casing, \$.0775; loss of casing pulled, \$.0395; digging slush pit, \$.0342; hauling miscellaneous material, \$.0919; cementing, \$.0256; pull and run casing, \$.1379; mud, ream, and clean out, \$.0524; miscellaneous expenses, \$.0729; field supervision, \$.0693; field engineering, \$.0643; miscellaneous material, \$.1190.

Q. Each of those costs are unit costs, are they not?

A. They are.

Q. Now, was this unit cost for each of these items worked out by a study of a certain number of wells?

A. Yes.

Q. How many wells were studied and where were they located?

A. Fifty-three wells have been studied in that connection, of which twenty-one were in the Panhandle Field, and thirty-two were in the West Texas areas.

Q. Now, you studied the actual records of the Company on those wells, did you?

A. Yes.

[fol. 849] Q. Did you personally make the study?

A. No.

Q. Who did?

A. Mr. Steinberger personally conducted this study.

Q. Was the study carefully made, Mr. Biddison?

A. I am sure it was.

Q. Are you sure it includes all the costs in connection with the drilling of wells?

A. I think it does.

Q. On the fifty-three wells studied, can you think of any cost to the Company that was omitted by Mr. Steinberger's study?

A. There is a cost of the shooting of wells that is not included in these figures I have just been talking about.

Q. But of the items you have named off here in such detail, with the single exception of the cost of shooting, has anything been omitted?

A. I don't think so, with respect to the wells studied.

Q. Adding all these items up, Mr. Biddison, and adding them to the \$2.75 per foot, contractor's drilling cost, still does not give your total of \$4.2992 per foot, does it?

A. I have, in this field, a drilling contract cost of \$2.75, and a Company cost of \$1.5492. The sum of those is \$4.2992 per foot, as used on page 45. There is nothing allowed for shooting and cleaning on this well.

Q. You say there was an allowance?

[fol. 850] A. There was not.

Q. But, Mr. Biddison, if we add right here, the items you just read off add up \$1.4820, instead of \$1.5492, which you say they should add to. I am trying to find out what the thing is we don't have.

A. What did you say your addition totaled to?

Q. \$1.4820.

A. I think then I must have read to you the West Texas Field figures, which total \$1.4819. Suppose I read the figures for the combined analysis of both the West Texas area and the Panhandle area, which are the figures that have been applied to the Chickasha field. I will read the figures which correspond to the same classifications I gave in the previous list, if that will be satisfactory, Mr. Fitzhugh?

Q. All right.

A. \$.4159; \$.3299; \$.0752; \$.0451; \$.0403; \$.0799; \$.0736; \$.1094; \$.0379; \$.0735; \$.1055; \$.0872; \$.0758; with a total of \$1.5492, compared with the total for the ones I previously read of \$1.4819.

Q. Was any allowance made anywhere in the drilling of this well, Mr. Biddison, for contingencies and omissions?

A. Yes, sir.

Q. Was that made at the end of your classification, or separately for each well?

A. The allowance for those contingencies in drilling, so [fol. 851] far as the Company's cost was concerned, is included in the figures of the unit cost per foot for these various operations which I have read to you.

Q. So that each unit figure given does include omissions and contingencies?

A. It does.

Q. In what amount?

A. I will read you the percentages applying to the different classifications of work in the same rotation as I have read the other figures of cost: 25 per cent; 10 per cent; 20

per cent; 25 per cent; 20 per cent; 20 per cent; 25 per cent; 20 per cent; 20 per cent; 25 per cent; 20 per cent; 15 per cent; 15 per cent.

Q. Do you know about how those percentages work out over-all—that is, the amount per foot?

A. Well, in the case of the over-all analysis, and of the \$1.5492 per foot, those percentages amount to in dollars per foot, \$.2475.

Q. Or approximately twenty-five cents a foot?

A. Nearly that.

Q. Twenty-four and three-quarters?

A. Yes.

Q. To get the unit cost in the first place you took the actual cost of fifty-three wells?

A. Yes.

[fol. 852] Q. Then from an analysis of those actual costs you got your unit figures?

A. Yes, sir.

Q. Now, explain to the jury, Mr. Biddison, why it was necessary, after you had gotten unit cost by a study of the actual construction figures, to make an allowance of twenty-five cents per foot for omissions and contingencies? What could possibly have been omitted from your original study?

A. So far as I know, nothing was omitted from the original study. It was not designed to have anything omitted from the original study. But, in the analysis of cost data you determine only the cost of the things from which the data was derived. When you go to apply that cost data to the construction of something else, at different locations, under different conditions, it is good judgment to allow for differences in those conditions that may cause differences in costs and any estimator who does not do that is courting disaster, either for himself as an estimator, or for the people who use his estimates as the basis for bids in trying to finance a proposition.

[fol. 853] Q. Mr. Biddison, if you are going to find unit costs by a study of actual construction or actual drilling isn't it just as likely that the fifty-three wells that you studied represent more than average costs or more than the costs that would be incurred on drilling to be done under different and new situations?

A. Some wells to be drilled might cost less than these; that is true. Some might cost very materially more. But these wells that have been analyzed have not been inclu-

sive of wells which ran wild and produced damages amounting to several times the cost of an ordinary well; they have been just ordinary wells. Drilling a well is a hazardous business, and the application of unit costs of several completed wells when applied to the drilling of 250 or 300 wells requires the application of a generous allowances for contingencies which may arise.

Q. How were the fifty-three wells built, Mr. Biddison?—weren't they all just wells that were drilled, regardless of location, over a certain length of time?

A. That is substantially it; yes, sir.

Q. They were not picked wells, were they, in any sense of the word?

A. They are only picked in the sense that after the Lone Star Gas Company began to accumulate cost data, in such shape as it could be properly analyzed, that this is the group of wells for which such data was available. That is the picking that was done.

Q. Isn't it a fact, Mr. Biddison, that the twenty-five cents, [fol. 854] approximately, per foot for omissions and contingencies which you have included as part of the drilling costs really represents a margin of safety to you as an estimator of costs?

A. Absolutely; that is what it is intended to be.

Q. Rather than the amount that will actually be the experience of some one in doing the same sort of drilling of different wells?

A. It is a margin of safety to cover those costs that will probably be incurred on the average.

Q. It is certain, is it not, Mr. Biddison, that none of the twenty-five cents per foot which you allowed for omissions and contingencies was actually incurred on the drilling of these fifty-three wells?

A. I think that speaks for itself; that is very plain; that is the case.

Q. How much is the twenty-five cents per foot, or rather the twenty-four and three-fourths cents per foot, for omissions and contingencies on the Warren No. 1 well?

(Here the witness made a calculation.)

A. About \$551.43, if my calculations here are exact.

Q. This is comparatively—this is a medium depth well, isn't it?

A. Yes.

Q. This well is about twenty-two hundred and something?

A. Twenty-two hundred and twenty-eight feet.

Q. You do have wells where the depth is twice this amount, do you not?

[fol. 855] A. Close to that lease, yes.

Q. Is this E. P. Warren well one of the fifty odd wells you studied.

A. No.

Q. The actual drilling cost as shown in your estimate will be \$9,578.62?

A. That is correct.

Q. Are you aware, Mr. Biddison, that the books of the company show that the actual drilling cost of this well, which was drilled only a month before the date of your appraisal, was in the amount of \$8,651.52?

A. I don't know anything about what the books of the company show with reference to this well and the drilling cost.

Q. I believe you stated you were not estimating from the books at all?

A. That is correct.

Q. Isn't it a fact, Mr. Biddison, that if you had applied the proper discounts on casing of ten, ten and two and had eliminated the twenty-five cents for omissions—the twenty-four and three-fourths cents for omissions and contingencies, per foot, that your nine thousand dollar figure for drilling cost as shown in your exhibit would have been scaled down to approximately the cost as actually shown by the company's books?

A. It is quite evident that if I had applied lower prices for anything my estimate would have been lower; but as for ten, ten and two being the proper discount, as stated in your question, I don't think it is. I think the proper [fol. 856] discount on casing is the one I have used.

Q. Well, isn't it a fact, Mr. Biddison, that if you had figured your casing cost on the basis of ten, ten and two and had omitted your omissions and contingencies, that your \$9,578.62 figure for drilling cost would have been scaled down to almost exactly the \$8,651.52 figure of actual cost as per the company's books?

A. Well, no, because the change in casing cost does not change in any way that drilling figure. That change in

casing price, if there were any, would produce a change in the figures for material.

Q. Take the total cost figure, then, Mr. Biddison, of \$13,094.83, for the whole well, drilling, fittings, casing and everything, if you revised the total cost to eliminate 24.75 cents per foot for omissions and contingencies and applied the discounts as indicated for casing, wouldn't you have come pretty close to the twelve thousand dollar figure shown by the company's books?

A. I don't know what figure is shown by the company's books. It is true that if I had used any lower price than I have for these unit costs I would have had a lower answer, of course.

Q. Well, Mr. Biddison, can't you look at the computation and tell if the indicated revisions were made that you would come to almost the twelve thousand dollar figure?

A. I have made no computation of what change would be effected in the cost of the casing by the difference in those discounts suggested by you. I can't answer that [fol. 857] about the casing.

Q. All right.

A. It is quite evident if you apply a lower unit price you get a lower answer. The amount of it can be computed, but I have not done that.

Q. Where you include miscellaneous cost of \$.0758 per foot, what does that miscellaneous include?

A. Well, that covers miscellaneous odds and ends, things that have to be done.

Q. Isn't that about the same as omissions and contingencies?

A. No, sir; it covers other things.

Q. Well, what is the nature of those?

A. Well, I can't tell you, but it is miscellaneous material and labor, so varied in nature as not to be subject to classification under the other general classifications shown for such work.

Q. Field engineering is shown by you to be \$.0872 per foot. About what per cent does that engineering appear to be of the total company cost?

A. The figure you show is field supervisions and field engineering, a combined analysis of .0758.

Q. That is miscellaneous, isn't it?

A. No. There is some difference in order in these va-

rious sheets. The engineering for the combined study is .0758 out of a total of 1.5492. That is about five per cent.

Mr. Griffith: Of the company's cost?

A. Of the company's cost, yes.

[fol. 858] Q. What was the field engineering unit cost per foot of the West Texas wells?

A. On the West Texas wells the field engineering is \$.0643 per foot.

Q. Throughout your exhibit, Mr. Biddison, you have used a uniform price for contractor's drilling fee?

A. No, not a uniform one. That varies with different fields.

Q. Well, throughout the same field, then, you have used the same drilling cost, have you not?

A. Yes.

Q. Is the Duncan field—that is in Oklahoma, isn't it?

A. It is.

Q. It is a field that is closely knit, a homogeneous field so far as the location of wells is concerned?

A. Fairly so, yes.

Q. In that field the contractors, you say, make the same drilling price throughout the field?

A. Well, I don't think I said that, but I have used a uniform price per foot.

Q. One of the wells in the Duncan field is the A. E. Harp No. 3. In the exhibit introduced by Mr. Connor and Mr. Steinberger at the hearing before the Railroad Commission on this well and several other wells in the Duncan field there was a fifty cent lower drilling cost to the contractor shown on the wells concerned. Now, in your present appraisal for the Duncan field you have used a uniform price. Why has that change been made, Mr. Biddison?

A. Well, I used a uniform price for the field because I [fol. 859] think we would encounter a uniform price in drilling those wells.

Q. Well, the former appraisal recognized the fact that there would be a fifty cent difference in drilling cost on some of the wells. Have conditions changed any in that respect?

A. I don't know that that condition ever existed. Maybe it did. I don't know.

Q. Did you make any examination of the actual records of the company to check that fact?

A. No.

Q. Did you make any inquiry of drilling contractors actually operating and who have drilled wells in the Duncan field?

A. Not personally, no.

Q. Well, was it done at all so far as contractors drilling in that field was concerned?

A. No, not drilling in the field. I don't know how long it has been since there has been any actual drilling in that field.

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Q. Mr. Biddison, it is a well known fact that when you drill a well you take bids from contractors just the same as you do on any other sort of construction; isn't that a fact?

A. You may or may not.

Q. Well, wouldn't you expect plenty of variation in the cost of drilling wells?

A. No.

[fol. 860]. Q. Does it stand to reason, because you could drill one well in the Duncan field, for example, at a certain cost, that you could drill all wells at the same cost? I mean, there is no such thing as an established contractor's cost?

A. Why certainly, there has been in almost every field in which wells are drilled, an established contractor's price.

Q. Well, what would be the use of taking bids on a contingent basis?

A. Well, there isn't much use in doing it on oil wells. It is sometimes done, but it is not ordinarily done.

Q. Mr. Biddison, don't you know as a matter of fact that it is always done?

A. I know as a fact that it is not always done. That is because the owner has confidence in a contractor.

Q. Well, there are many fields in which that is not done?

A. There are plenty of them in which there are men in whom you can place a certain amount of confidence.

Q. Yes, and in those where your company is doing actual drilling, don't you take competitive bids?

A. I don't know how they are doing it now.

Q. Turn to page 94, please, sir. That page starts out, does it not, with the inventory of equipment located in the Panhandle field of Texas?

A. It starts the details of that, yes.

Q. In the inventory of the first well appearing on the first page of the Panhandle field section is listed a gate [fol. 861] valve, screwed, Hughes Tool Company, 2,000 pounds, non-rising stem. The unit cost for that valve is \$405.72. Now, where did you find the description of that valve?

A. Where did I find the description of it?

Q. Yes, sir.

A. That description was obtained by examination of the valve. I sent men out in the field to check those.

[fol. 862] Q. All right. Does the inventory that you have included in the exhibit show exactly the same notation as your field inventory, which I believe you said was made by actual field check?

A. The previous inventory was revised as to descriptions on items of this sort from notes taken by men who went to the wells to determine the proper description of the items.

Q. All right; do you have the original notes made by the men in the field?

A. Not here, no.

Q. Don't you have those in your working papers?

A. No.

Q. Is there any way to check at all, Mr. Biddison, to find a fuller description of this valve, than the one given in the inventory on page 94?

A. Well, I don't know what fuller description would be needed to identify it. We might send somebody up there to look at it and take a picture of it. I think this is pretty well identified.

Q. In the appraisal introduced before the Railroad Commission, Mr. Biddison, it shows on this same valve this notation: "Gate Valve, Screwed, Hughes Master, 8-inch, 500 pound working pressure". I believe that completes the notation. Has there been a change in the valve since the time of that inventory?

[fol. 863] A. I think not, but there has been a change in the description of that valve, based on an inspection of that identical valve because of the description that was used in that previous inventory to which you refer. The description previously given left the question open as to whether or not some of these valves referred to as Master Valves were or were not Drilling Valves.

Mr. Griffin: And you wanted to remove all doubt, as far as this case is concerned?

A. Yes. So we had them all investigated.

Q. You do not have the results of your investigation you say?

A. The results of the investigation are shown in the description given in this appraisal.

Q. Well, the other inventory, the one that was submitted before the Railroad Commission, was the result of some investigations, too, wasn't it?

A. Yes, but the descriptions given in some cases were not as complete as they should have been, and as the result of that I had the investigations conducted, to get the proper descriptions of those valves.

Q. This appears, then, in your present appraisal as a correction of the old appraisal,—is that right?

A. That is right.

Q. What is a Drilling Valve?

[fol. 864] A. A Drilling Valve is a valve having a throat opening large enough so that the drill tools may be passed through the valve without injury to the valve disks or the valve seats.

Q. What is the difference between a Drilling Valve and a Master Gate Valve?

A. Well, a Drilling Valve has the feature to which I referred, that you may run a drill through it—drill tools through it without injury to the disks or to the seat, and the Master Valve is simply the main valve on a well, and it may be a Drilling Valve or not a Drilling Valve; it may be screw or flange, or any other kind. The Master Valve refers to its position, while a Drilling Valve is the description of the character of the valve.

Q. Now, on page 98 you show further down on the page, under Adams and Prince—Burcham No. 2, a Gate Valve, screwed, Westcott 10 by 8¼ inch drilling, 800 pounds working pressure. What does the 10 by 8¼ inch refer to?

A. In that case that means that this valve has a ten-inch body, but threaded on the ends for 8¼ casing. It the same general idea of a .38 revolver on a .44 frame.

Q. Where did you get then, Mr. Biddison, your unit, cost [fol. 865] of \$495.88 for this same valve?

A. (After examining working papers.) Well, I don't know where this price came from. I think this should have

been priced at \$445.90, this being the nearest list to suit that description.

Q. What is the \$445.90 the price of?

A. The price of a 10-inch nominal Westcott, steel, solid wedge, non-rising stem, 1000 pound. It is a drilling gate valve.

Q. After discount.

A. Yes, the net delivered cost.

Q. What was the price before discount?

A. \$455.00.

Q. What do you mean by 10-inch nominal?

A. I mean a 10-inch body. It may have the ends reduced to smaller size casing.

Q. Has that a price in the catalog, Mr. Biddison? I will ask you to look and see if the ten inches which you just referred to doesn't apply to the part of the valve having the connection with the casing, being capable of taking a 10-inch casing.

A. It is capable of taking 10-inch casing, yes.

Q. Rather than—

A. This 10-inch nominal pipe size as here listed for these drilling valves will take $9\frac{5}{8}$ to—

Q. But this valve in your inventory, Mr. Biddison, as [fol. 866] already testified to by you, is supposed to take $8\frac{1}{4}$ inch casing, you say?

A. That is right.

Q. You say that the 10 by 8—

A. 10-inch valve with $8\frac{1}{4}$ inch casing threads.

Q. All right. Now, then, you will have to pick out the valve in these quotation sheets which will take $8\frac{1}{4}$ inch casing, will you not?

A. If you have got a valve with a 10-inch body and have it threaded for $8\frac{1}{4}$ inch casing.

Q. The quotation which you just gave for the 10-inch nominal valve is for 500 pounds working pressure and 1000 pounds test, is it not?

A. That is right.

Q. But the valve that appears in your inventory is 800 pounds working pressure. Now, doesn't that mean something?

A. Yes, it does, and I have been trying to find it in the 1000 pound list.

Q. Well, now, look under 800 pounds working pressure, 8 $\frac{1}{4}$ inch nominal size, and see if you don't find the valve you are looking for, listed at \$342.00, minus two per cent, or discounted two per cent.

A. I don't have such a list as that.

Q. Do you have a list at all for 800 pounds working pressure [fol. 867] sure?

A. I have a Walworth listed at 800 pounds working pressure.

Q. What does that give for an 8 $\frac{1}{4}$ inch valve?

A. A Walworth 8-inch body valve—drilling valve, net delivered cost, is \$335.16.

[fol. 868] Q. Now that valve, that Walworth valve takes the same price as the Westcott valve listed in your inventory, does it not? The very valve we are talking about?

A. No, I don't think it does. This valve is a reducing size valve, as listed.

Q. This valve is marked in the inventory as a drilling valve?

A. Yes.

Q. And not a reducing valve.

A. It is marked both ways—10 x 8 drilling valve.

Q. Well, at any rate, without wasting any more time on this particular one, Mr. Biddison, what you have really priced here is a ten inch 1000 pound working pressure, \$506.00 list, minus two per cent, valve, and get your final unit cost of \$495.88?

A. I think that is what has been done, yes.

Q. And what should have happened, instead of doing that, would be to price the valve as an 8 $\frac{1}{4}$ inch 800 pound working pressure valve, at a list price of \$342.00 minus two per cent for discount, to get a final price of \$335.16?

A. Well, I do not find before me a Westcott price list on the 800 pound working pressure valve. There apparently has been a substitution in price made on that item.

Q. Mr. Biddison, you claim to be a man of great experience—don't you know that the Westcott and Walworth valves take the same price?

A. They do for the same class of valves on the same list, yes; but the Walworth valves have been developed with a [fol. 869] style of construction which is different from that formerly used by Westcott when they furnished valves with one body size, built down in the mold for smaller size pipe connections.

Q. If I show you the discount sheet of November 1, 1933, Catalog No. 3 of Continental Supply Company, would that help you any to answer my question?

A. This list would not apply to valves of that type.

Q. Why won't it?

A. Because the valves are not of that type.

Q. Well, what does this list apply to?

A. It applies to drilling valves, but not to reducing drilling valves.

Q. If I understand you correctly, you say this catalog applies to drilling valves?

A. That list you showed me.

Q. You have actually priced this as a drilling valve at the price you have it in your appraisal?

A. Yes.

Q. Except you have a different working pressure valve?

A. That's right.

Q. If you re-priced it, still as a drilling valve, to the new working pressure, won't you make the corrections we have indicated?

A. I can't price that particular valve from that list, which does not apply to this class of valve.

Q. It certainly applies to the valve you have listed in the inventory, doesn't it?

[fol. 870] A. It certainly does not apply to that valve; that is the point.

Q. Why do you say that the Westcott valve, designated as screw, 10 x 8 $\frac{1}{4}$ drilling valve, 800 pounds working pressure, non-rising stem, and that is the whole designation which appears in the inventory—why do you state that is a reducing valve?

A. Because it so states in the inventory—10 x 8.

Q. On the same page, Mr. Biddison, just a few lines above, there is a valve designated as screw Westcott 10 x 8 drilling, 500 pounds working pressure, non-rising stem. Do you see that valve?

A. Yes.

Q. Is that a reducing valve?

A. It is.

Q. Is it priced as a reducing valve?

A. It is not.

Q. It is priced as a drilling valve, isn't it? These valves that we are talking about now, Mr. Biddison, are valves that

appear lots of times throughout the appraisal; isn't that true?

A. Yes.

Q. And what would apply to one would apply to all?

A. In general it would, yes. Well, I haven't any list of a 500 pound Westcott drilling valve.

Q. Mr. Biddison, I asked you about that valve to try to call your attention to the mistake you made in the first valve, but don't you in checking this list find that you have made another error in the last valve also, and that it has been [fol. 871] priced instead of an eight inch as a six and a quarter inch 500 pounds working pressure?

A. Apparently it has been.

Q. Well now, anyway, to get this matter straight, Mr. Biddison, just to show what has happened here, I wish to show you the front of a valve catalog by Westcott. Now the first number that appears in your designation in your inventory, where you said 10 x 8 $\frac{1}{4}$, the 10 part means the size of the body of the valve, right here (indicating on picture)?

A. That's right.

Q. And the 8 $\frac{1}{4}$ applies to this portion of the valve where you actually make the connection to the casing?

A. That's right. That is what constitutes a reducing form of drilling valve.

Q. What was that now—let's see now if that's right. Say that over again, please sir.

A. I say that is what constitutes the reducing form of drilling valve.

Q. You mean where the size of the body is larger than the size of the valve at the point where the casing is connected, it is a non-reducing valve; is that it?

A. No, that is not what I mean, at all.

Q. Or the reverse of that?

A. I mean where you take a valve with a ten inch body, and reduce the valve to take a smaller size of threaded pipe, you have a reducing type of valve, and that is the form in which Westcott valves were made for a number of years.

[fol. 872] Q. In your catalogs, Mr. Biddison, do you have a picture of a reducing valve?

A. I do not have catalogs with me; but I doubt if they would be shown in the recent catalogs.

Q. Doesn't a reducing valve designation mean, Mr. Biddison, simply that the valve has a smaller opening and will

take a smaller size of pipe on one side than it will on the other?

A. No, it does not mean that at all. It means that the valve in say a 10 x 8 drilling valve or a reducing drilling valve, that you have a 10 inch valve, but that it is tapped at both ends for 8 inch pipe.

Q. Well now, to get back to the valve we were originally talking about, Mr. Biddison, this ten by eight and a quarter, 800 pounds working pressure; what do you conclude should be the correct price applied on that?

A. Well, I can not give you an exact conclusion on that at the moment, because I do not find any Westcott list on 800 pound working pressure drilling valves. I have one for 500 pound working pressure 1000 pound test, and I think there must have been some substitution which I have to find the reason for—some other schedule, which will be a comparable schedule.

Q. You do have the Walworth quotation, don't you?

A. Yes, I have Walworth drilling valve schedules.

Q. What does the Walworth schedule show for an 8¼ inch casing size, 800 pounds working pressure?

A. \$335.16, delivered price.

Q. And isn't that the price that you should have used for [fol. 873] this Westcott valve?

A. No, because that Westcott valve is a reducing valve. If it were not of the reducing type—if it were of the later type of Westcott valve, I believe it would take the same schedule.

Q. You say this Westcott valve is no longer manufactured?

A. No, I didn't say that.

Q. Is it still being manufactured?

A. Westcott valves are still being manufactured but the design on drilling valves has been altered.

Q. When did that alteration take place?

A. I don't know. Several years ago.

* * * * *

Q. We still don't have a final price on it, your Honor. On page 100, Mr. Biddison, screw Crane, 10 x 8¼ drilling, 1600 pounds test, double disc, led ends, non-rising stem, priced at a unit cost of \$717.36. How did you find the price on that valve?—Mr. Biddison, maybe just to save time we could arrange it this way: will you over the noon hour

pick out any three drilling valves, exclusive of Hughes and Jarechi, and show how you obtained the price on them?

A. Yes.

[fol. 874] Q. Mr. Biddison, before noon, I believe I asked you to give us the prices on any drilling valves, together with the way in which you obtained the prices on same; did you obtain those?

A. I think I have it here. On page 98, the valve to which you had previously referred—Westcott 10 x 8¼ inch Drilling 800 lbs. working pressure, non-rising stem,—there was not made up for purposes of this appraisal a price-list on each and every kind and size and weight of valve; and for Westcott 800-pound drilling valves of this type I do not have a price sheet worked up. There are a few of those valves in this group of property; therefore, in pricing, a substitution was made of a Kerotest price on a 10-inch drilling valve, net cost \$495.88. Now, I do have a price-list worked up on Westcott Drilling Valves of the 500 pounds [fol. 875] working pressure, and the price for such a valve is \$445.90. The price for the 800-pound test valve would be considerably higher than on the 500-pound test valve. Now, on the same page on the Burcham No. 1 Well, the Westcott 10 x 8 in. Drilling 500 pounds test working pressure, which has been priced at \$245.00, should have been priced at \$445.90. The price shown opposite that valve is taken from the correct list, but they apparently missed a line in crossing over to get the price.

Q. In other words it should have been priced at two hundred dollars more than you have it priced?

A. That is correct. On page 100, in the Burcham No. 2 Well, is listed a Crane 10 x 8¼ in. Drilling 1600 pounds test. I do not have the worked up price-list on Crane Drilling valves, and a substitution was made on this item. The substitution was made from the list on Kerotest valves, 10-inch, 2200 pounds, \$1770.36, from a list of 3,000 pound test valves. The substitution on this should probably have been made from the 2,000-pound test list, which is the nearest test to the 1600-pound test, and the price would have been \$674.24. On page 106, the J. W. Curry No. 3 Well, there is listed a Crane 8-inch Drilling Valve, 1600 pounds test, priced at \$539.00. This price is taken from a 3,000 pounds test list, and should have been taken, as the nearest corresponding

[fol. 876] list, from a 2,000 pounds test list, with a price of \$405.72.

Q. You mean the correction there should be to \$405.72 from \$539.00?

A. The correction should be to \$405.72, on page 108. On page 108—

Q. Just a minute before you leave that, Mr. Biddison. The valve just priced by you was corrected to the 2,000 pound test, where it is listed as 10-inch, at a price—correction—to an 8¼, instead of 10-inch, where it is shown at a price of \$414.00. Now, if you had, instead of that, taken the 8¼ inch from the 1600-pound test, wouldn't you have gotten the price of \$342.00 as the base price?

A. From this catalog you are showing me, yes.

Q. Now, your inventory does show a 1600-pound test?

A. Yes.

Q. And the price you used was on a 2,000-pound test?

A. Yes.

Q. So if you used the 1600-pound test schedule, you would get a still lower price than the one you got, wouldn't you?

A. Yes.

Q. And less discounts what would that make the cost of the valve?

A. I have not made a note of that figure you have there.

Q. \$342.00.

A. (Figuring) \$335.16.

[fol. 877] Q. Have you anywhere in your price-list, Mr. Biddison, an 8¼-inch 1600-pound test drilling valve priced out—any make?

A. Yes; I do have Walworth 1600-pound test.

Q. Eight and a quarter inch?

A. Yes; \$335.16.

Q. That is exactly the price we quoted, isn't it?

A. Yes.

Q. And isn't that the correct price that should be given this, instead of \$539.00?

A. I believe it is. I was explaining the list from which the substitution should have been made—that procedure they went through.

Q. What size casing was on that valve now, Mr. Biddison?

A. Eight and a quarter inch, 32 pounds.

Q. And what was the size of the screw ends on the valve?

A. Threaded for 8¼ inch casing.

Q. Would that be a 10-inch body then?

A. No; that is not a reducing type of drilling valve.

Q. Well, as you conceive this valve, it has an 8 $\frac{1}{4}$ -inch body, and 8 $\frac{1}{4}$ inch ends, and it has just an 8 $\frac{1}{4}$ inch sleeve, hasn't it?

A. It is eight and a quarter all the way through; while a 10-inch valve would be a ten-inch valve simply reduced in the opening to take 8-inch threads.

[fol. 878] Q. Now, a drilling valve is supposed to be a valve that has the moving parts within the moving body so recessed as to get the valve seats movable parts out of the way of any drilling stems dropped through the body of the valve?

A. That is right.

Q. If you had a valve which was more or less a constant size, or sleeve type valve, it would not be a drilling valve, would it?

A. It depends upon whether it is built as a drilling valve. If it is built with the valve seats recessed back in the body so as to be protected, it then constitutes a drilling valve. Now, drilling valves can be made in two ways: Originally, drilling valves were made by taking a 10-inch valve, and instead of tapping it out for 10-inch pipe, tapping it out for a smaller pipe. That was the first type in use, and probably the best type in use yet; but because those were very expensive the ordinary line of valves has been somewhat modified so as to recess the valve seats back into the body, and thus provide a straight opening so that the drilling stem may pass through without touching the seats. Those are the two general types of drilling valves. The first type is, of course, a heavier valve, for the same working pressure, because it is one pipe size larger.

[fol. 879] Q. Then, this valve since it is designated as drilling in the inventory, it is supposed to be a recessed valve?

A. Yes, sir.

[fol. 880] Q. All right now, in the valves that you just cited previous to this one, in each of those cases didn't you price an 8 $\frac{1}{4}$ inch drilling valve, Mr. Biddison, at the price contained in the quotation sheets for 10 inch?

A. No, I priced a 10 x 8 $\frac{1}{4}$ valve at the price contained in the quotation sheets for a valve of that style, which is a ten inch body. That same valve could be tapped out for 10 inch

pipe and be used as an ordinary ten inch valve. It would not then, however, be a drilling valve.

[fol. 881] Mr. Fitzhugh:

Q. Just to sum this up, I will ask you a blanket question. Haven't you in every case, Mr. Biddison, where you have purported to have priced an 8 $\frac{1}{4}$ inch valve, priced it as a 10 inch valve?

A. I didn't get that question.

(Reporter reads the question)

Q. And I am talking about drilling valves.

A. No. Not at all; not at all.

Q. Well, where your screw end is 8 $\frac{1}{4}$ inch, and the valve body is listed in the inventory as 10 inch, haven't you priced all those valves as 10 inch valves on the screw end?

[fol. 882] A. They are priced under those conditions as 10 x 8 drilling valves, which bears the price paid for a ten inch valve, because it is a 10 inch valve simply bushed down in the casting to take an 8 inch pipe. Where it is listed in the inventory as an 8 inch valve, it is not priced in the appraisal as a 10 inch valve.

Q. Have you gone over this enough to know that Mr. Richey will say the same thing on the same valves?

A. Mr. Richey can not testify as to the prices put in here. He can testify as to the derivation of the prices here used.

Q. How is that now?

A. Mr. Richey can not testify as to the prices, as they are applied in this valuation; he can testify as to the derivation of all those prices.

Q. Well now, if I understand it, Mr. Richey took the catalog and the quotation sheets, together with the discounts the company receives, and computed for you, following instructions you gave him, the unit prices you actually applied for valves and perhaps other equipment?

A. Yes, Mr. Richey compiled the price book on materials. He is not responsible for the application from the price book to the quantities of material in the inventory.

Q. All right.

Mr. Griffith: In other words, Mr. Biddison, if there is any mistake in the application of the price book prices to the inventory materials, you will have to bear the burden of that?

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A. Yes, that is correct.

{fol. 883] Q. Well now, let me get this still a little bit clearer: Mr. Richey is the one that is personally responsible for the prices which now appear in the price book?

A. Right.

Q. And you are responsible for the prices taken from the price book, as applied to the inventory?

A. That is correct.

Q. Turn to page 276. That, I believe Mr. Biddison, is your recapitulation sheet or your summary sheet for drill repair and cleanout tools?

A. Yes.

Q. How much of the equipment there shown in the total amount for the different fields is used for the purpose of drilling new wells?

A. Well, there is very little of it in any fields that could be used for that purpose.

Q. Could you say how much?

A. No, I could not.

Q. How much of that equipment is used solely for repair and clean-out purposes?

A. Practically everything that is listed.

Q. Could you make a separation as between the equipment that is used for repair and clean-out, and that which is used for drilling purposes?

A. No, because it may be used interchangeably. Anything used in drilling could be used for repair and clean-out work, [fol. 884] and a great deal of the equipment used for repair and clean-out work could be used for drilling.

Q. In the previous appraisal, introduced before the Commission, for the same equipment and property you arrived at a total amount of \$90,132.82.

A. Not me. I had nothing to do with that appraisal.

Q. Well, your company did.

A. That might be.

Q. That was divided, \$58,324.24 for drill tools and equipment, and \$31,808.58 for repair and clean-out tools. Is it your opinion, Mr. Biddison, that about the same proportion still prevails as between those two classes of property?

A. Well, you could divide this thing up so as to get that proportion, but it wouldn't mean anything, when you so divided it, because all this equipment in here is usable for repair and clean-out work, and necessary to be had by the company for that class of work

Q. Was any of that equipment listed on page 276 of your appraisal used in drilling the wells of the company as shown in your appraisal?

A. Some of it may have been. It was not used up, however.

Q. Well, do you know whether it was used or not?

A. No, I do not. It could not have drilled very much.

Q. Well, the \$2.75 per foot price for the contract price of drilling which you have used in your appraisal includes the depreciation, return and every other expense in connection with the use of drill tools, doesn't it—that is, the contractor bears all of that expense?

[fol. 885] A. On his own tools, certainly.

Q. That is not a cost that the company has to bear, in addition to the \$2.75 per foot?

A. No, not on the contractor's tools.

Q. Where the company property has been used in drilling in the past to bring into being the wells now in existence, and where the expenses of operating that drilling equipment, and all maintenance and the cost of replacements and repairs on such machinery, together with depreciation requirements, have been taken care of by operating expenses in the past, is it your testimony now, Mr. Biddison, that that property is property capitalizable and proper to be included in a rate base in an appraisal made for the purpose this is made?

A. Why, if the company has property on hand, I cannot conceive how it could make any difference what previous use has been made of it. If they have it on hand, and if it is theirs, and if it is property used and useful in the public service, it is proper to include it in a rate base.

Q. To put it another way, Mr. Biddison, if you include all drill equipment in a classification of property and arrive at a value for it, and include it in your appraisal, and at the same time forget the company has that property and use a contractor's price, which contractor's price includes all depreciation, wear and tear and cost of maintenance and operating of drilling tools in reproducing the drilling of the [fol. 886] company's wells, and include it as the cost of well equipment, haven't you a duplication to that extent?

A. No sir, not one iota of duplication. Now, if I included as repair and clean-out tools, all the tools and equipment that were required for the drilling of the 270 odd wells that the company has, after having written off the bulk of that

equipment as part of the expense of drilling wells, then there would be a duplication. But what we are talking about here is not equipment used up in the drilling of those wells, but the equipment not used up in the drilling of those wells, and I think this equipment stands in exactly the same light as if, upon the completion of the construction program, there were no equipment left over and the company then went out and bought this much.

Q. Isn't your method, Mr. Biddison, of applying a contractor's drilling price the same as if you had regarded the drilling tools of the company as separated from the property of the company and owned by some other company or corporation, or let us say, the well-drilling section of the Lone Star Gas Company?

A. Yes.

Q. In other words, you have regarded that property as serving in the same way and for the same purposes as a drilling contractor would use the property?

A. Yes.

Q. But a drilling contractor's property is not property to [fol. 887] be included as public service property, is it?

A. No, and I have not included any drilling contractor's property in here; but I have included only the property of the Lone Star Gas Company.

Q. You have included the company's tools, when they are using the tools, as you have applied it in your appraisal, just the same as if separately owned?

A. These are not the tools that drilled the 270 odd wells of the company. This is a little remnant of drilling equipment, some of which may have been used to some extent in drilling, but it represents only a very small fraction of the equipment required to drill 270 wells.

Q. Didn't you say a moment ago, Mr. Biddison, that you did not know what these tools were used for, and whether they drilled any of the company's wells or not?

A. I said I did not know whether they had drilled any company wells or not, but I certainly know that 95 to 96 Thousand Dollars worth of equipment did not drill 270 some odd gas wells.

Q. Turn to page 296, gathering system rights of way summary, where you show the gathering system rights of way for the Panhandle field of Texas, in the amount of \$2,778.00. How did you find that amount?

A. These values are determined by taking the book cost of right of way purchased for those lines, and multiplying that figure by three, to obtain the estimated cost of purchasing these pieces of right of way; to include the expenses of [fol. 888] making the purchase, and the damages to be paid as a result of construction.

Q. Didn't the expenses as shown by the books show all expenses in the first instance?

A. No, they showed the cost paid to the land owner.

Q. Don't they show the cost of acquisition?

A. I believe not.

Q. Don't they show the cost of registration of deeds, and the examination of titles.

A. The figures as taken off and here used are the amounts paid to the land owner for this right of way.

[fol. 889] Q. Don't they include damages?

A. These figures do not include damages, and we have multiplied the figures by three so as to include damages.

Q. Well, how did you determine, then, that in order to find the proper conclusion to make for all these items, that multiplying the book cost, or the cost as shown by the books of the company, for amounts paid to the owner, would be an exact multiplication of that amount by three?

A. Well, in the first place, I didn't find it out to be exact, but I know from my own experience in the purchase of right of way that the amount paid to the land owner constitutes about one-third of the total cost of right of way.

Q. You take that figure as an average, do you?

A. Yes, sir.

Q. Does that include clearing?

A. That includes a slight amount of clearing. It will not cover clearing in heavily timbered country.

Q. Well, did you arrive at your conclusion from your experience in Louisiana?

A. From my experience in Ohio, Pennsylvania, West Virginia, Kansas, Louisiana, Mississippi, Alabama, Georgia, Florida, Mexico, and Texas.

Q. In the Louisiana work that you did the most of it was through quite heavily timbered country, wasn't it?

A. It was.

Q. Did you find that three times the cost of right of way to the company was sufficient to cover clearing in that territory?

[fol. 890] A. I did not. I found in that territory it cost from three to ten cents per lineal foot for clearing right of way and an additional charge would be to cover stumping at the site of the ditch.

Q. How much do you think would be required in fixing up a right of way in the Panhandle?

A. Very little, sir.

Q. Would there be any at all?

A. Yes.

Q. In any of the Texas territory is the clearing—does it amount to much at all?

A. In some parts of Texas, yes, it is very severe.

Q. I mean over all.

A. Well, it is not comparable to the amount of clearing in Louisiana, but in some parts of Texas we have heavy timber. There is a great deal of West Texas and North-west Texas that has a good deal of scrub timber, which is just about as expensive to clear as heavy pine is in Louisiana.

Q. On page 303, in testifying about field measuring station structures, I believe you testified that \$2.86 per hundred board feet covered the cost of installation of material?

A. Well, that was for some particular grade of lumber. I don't remember particularly which one right now.

Q. Well, for instance, on that page the first field measuring station structure shown is the Alma Petroleum Company Parks No. 2, shown at \$60.87. How would your installation cost work out on that structure?

A. Framing lumber for this structure, two by four material, [fol. 891] is quoted by Hudson-Houston Company at Rush Springs, Oklahoma, for No. 2 material, the delivered price is \$3.50 per hundred board feet. From this is deducted two per cent cash discount. Then there is allowed—

Q. Wait a minute. The installation cost is all we want.

A. I thought you wanted the total cost.

Q. No. We can save some time there.

A. The installation cost is estimated at \$2.79 per hundred board feet, or \$27.90 per thousand board feet.

Q. Now, then, how did you find that?

A. That is based upon an estimate of one first-class carpenter, one second-class carpenter, and one carpenter's helper for fifteen hours each per thousand feet board measure of lumber, at rates, respectively, of sixty, forty-

five and thirty-five cents per hour, producing a direct labor charge of \$21.00 per thousand feet board measure. To this is added 10.8 per cent supervision, 4.6 per cent tools and supplies, 8.8 per cent for construction plant expenses and 8.48 per cent for liability and compensation insurance. To this is added two and one-half per cent for omissions and contingencies, producing a total cost in Texas of \$2.86 per hundred feet board measure. In Oklahoma, with the same direct labor, with the addition of field supervision charge of 10.7 per cent, tools and supplies at 4.6 per cent, construction plant expenses at 8.7 per cent, liability and compensation insurance at 5.59 per cent, omissions and contingencies at 2.5 per cent, I arrive at a cost per thousand [fol. 892] feet board measure of \$27.90.

Q. Now, if I understand you, Mr. Biddison, there is one first-class carpenter, another ordinary carpenter and a carpenter's helper, all working fifteen hours to lay one thousand board feet?

A. That is correct.

Q. Now, how do you know that that is the correct amount of time required to do that work?

A. Well, I have built several hundred such buildings myself and I have built quite a number of other structures myself, and this is based upon my experience in making structures of this character. On some of those structures it took less time for that amount of lumber, and on others it would take twice that much. This is an average.

Q. What are the structures that you say you built?

A. These are measuring station structures we were talking about. I have built hundreds of them.

Q. Well, whereabouts?

A. Well, I have built them in Kansas, I have built them in Ohio, I have built them in West Virginia, I have built them in Louisiana, in Mississippi, in Alabama, and in Georgia.

Q. Can you refer, Mr. Biddison, to a single instance where you did some construction work which necessitated building of these structures where you kept your cost records?

A. Why, yes; I have kept cost records on this class of work, or had them kept for me, at every place I have been.

Q. Well, can you find any certain number of hours the [fol. 893] men were required to work?

A. Yes, sir.

Q. Do you have those results with you now?

A. No, sir.

Q. Mr. Biddison, when you say you rely on your experience where you built hundreds of such structures, don't you mean you have been around where such things were constructed without knowing a darn thing about what was going into the cost?

A. No, I don't mean that. I mean exactly what I have said.

Q. Have you any cost records?

A. Yes, I have cost records. I have cost records on everything I have had analyzed.

Q. Can you pull out any sheet of paper that will show the actual performance of men building these houses and the amount of time they spent doing it?

A. No, sir.

Q. Wouldn't it be safer for you to refer to a carpenter's handbook for this figure.

A. No, I think not.

Q. And isn't that what you actually did?

A. No, I did not. I am not entirely unmindful of the value of some of the handbooks in estimating work of this sort, but they can not be used safely by anybody who has not had experience in doing the work. Those handbooks will give you the performance within certain limits, but some judgment must be exercised as to where to place the limits.

[fol. 894] Q. You used in the structures where corrugated iron was installed a cost of \$3.54 per square for the installation of corrugated iron, did you not—that is your Texas price, I believe?

A. \$3.54 is the Texas price, and \$3.46 in Oklahoma.

Q. Now, how did you get your \$3.54 Texas price per square?

A. That is estimated upon the basis of one carpenter, first-class for two hours and two carpenter's helpers for four hours for the installation of one square, with the addition of the charges for supervision, tools and supplies, construction plant expenses, liability and compensation insurance, the same as on carpenter work, and an allowance of two and a half per cent for contingencies.

Q. Then you relied, did you not, in this instance on your general experience the same way as in the installation of rough carpenter work?

A. Yes. These are small buildings, with a great deal of cutting and fitting of material, and the labor cost for installation of corrugated sheets is in no way comparable to the installation of sheets on large structures.

Q. Where you have used four hours as the time required by this group of men to install one square of corrugated iron, that is only an approximation, is it not?

A. Certainly, but that is not the figure I used. The figure I used is one carpenter two hours and two helpers during that period, which gives two hours for the carpenter and four hours for carpenter's helpers.

[fol. 895] Q. Turn to Field Measuring Station Equipment, page 351. On Direct Examination you gave the method of finding the cost of equipment on Alma Petroleum Company, Parks No. 2, did you not?

A. I believe I did.

Q. You show on page 351 a Foxboro, Type C Orifice meter, as described on that page, and on this particular installation the Alma Petroleum Company, Parks No. 2, is the first one shown in the itemization, at a cost of \$219.74.

A. Yes.

Q. Do you locate that?

A. Yes.

Q. On Direct Examination you said that the delivered price of the meter was \$152.7382. How was that figure found?

A. That price was arrived at from a list price, f. o. b. Foxboro, Massachusetts, of \$136.44, subject to a discount of two per cent for cash, which is, net, \$133.7112. The freight rate is \$4.30 per 100 pounds less than carload rate, or on 85 pounds \$3.6550, resulting in a net cost at railroad destination for the bare meter with ordinary clock of \$137.3662. To this there is to be added for 7-day jewelled clock, \$11.47, and for five pounds of mercury to charge the meter, \$3.902, producing the total price for this meter, with [fol. 896] 7-day jewelled clock and with the mercury, \$152.7382.

Q. Turn to page 354, please, Mr. Biddison, under Field Measuring Station Equipment, for the Chickasha Field, Group No. 4. You have listed an orifice flange and plate. That applies to the wells under that group?

A. Yes.

Q. What is the purpose of that orifice flange and plate?

A. The purpose of that orifice flange and plate is for the attachment of the meter.

Q. Is it in the well line?

A. Yes.

Q. As shown by your inventory, there is no meter attached.

A. That is correct.

Q. Would there be any use for the orifice flange and plate without a meter attached?

A. Well, it is there for the purpose of the attachment of the meter when the meter is desired.

Q. At this time, though, as shown by your inventory, there could have been no use for that flange and plate, could there?

A. It was not in use as a measuring device, apparently, as of the particular date of the inventory.

Q. As a matter of fact, hasn't the whole line been removed?

A. I think not. I had all those lines checked for that [fol. 897] purpose, to find out.

Q. Well, now, where is the field line that this group appears on?

Q. Mr. Biddison, we were talking just before the recess about the orifice flange and plate shown for the Group No. 4 wells on page 253—I mean page 354, being the Field Measuring Station Equipment in the Chickasha Field in Oklahoma. I will ask you if it isn't a fact, Mr. Biddison, that these flanges and plates as they appear in the appraisal are just hanging out in mid-air, without any line, meter or anything to support them? In other words, Mr. Biddison, under your Meridian gas lines you do not show any M. G. 14 or 15, do you?

A. No, I don't. I can't answer your question at this time.

Q. All right. Turn to page 406. What was the price you used for the 4-inch 11 pounds per foot pressure pipe, at the top of the page?

A. \$.6652.

[fol. 898] Q. This pipe represents the first field line appearing in the appraisal, does it not?

A. It does.

Q. And this is the same unit price that you gave a breakdown on upon Direct Examination, is it not?

A. I am not sure whether it was or not, Mr. Fitzhugh. I believe it was.

Q. Now, the price that you gave on Direct Examination for the price of pipe is given f. o. b. Chickasha, is it not?

A. Well, the price I have used on pipe is Texas common point delivery, as being applicable to the territory in its entirety.

Q. Well, in the case of the Chickasha Field, that is in Oklahoma, isn't it?

A. Yes.

Q. And in that case it would be f. o. b. Oklahoma common points?

A. All pipe in this System has been figured on an 86-cent freight rate as being an average freight rate for all the points on the System for pipe.

Q. Now, the price given, then, on this pipe is f. o. b. the delivery point in Oklahoma or Texas?

A. Yes, sir.

Q. And includes, does it not, besides the cost at the mill, the freight and discounts?

A. Yes, the price which appears on page 406 is the price [fol. 899] of the pipe installed.

Q. Now, what is the price f. o. b. the factory for this pipe?

A. F. o. b. mill, \$39.14 per 100 lineal feet.

Q. What is the price as of to-day, f. o. b. the mill, for the same pipe?

A. As of to-day?

Q. Yes, sir.

A. I can not give you f. o. b. mill prices as of to-day.

Q. On any pipe?

A. No, I can give net delivery prices as of to-day; but I can not give at this time f. o. b. mill prices on it.

Mr. Griffith: You say you could give the net delivered prices, Mr. Biddison?

A. Yes, sir.

Q. Well, will you be able to take from those the freight, discount, and so on, so as to get back to the mill price?

A. Yes, I can work that back. I do not have right here with me the freight book on pipe; I have it at the hotel. If I had that here I could work it out right here on the spot.

Mr. Griffith: For your information, Mr. Fitzhugh, a subsequent witness will show present-day prices on pipe in an [fol. 900] exhibit.

Q. Well, do we understand, Mr. Biddison, that you are not accepting any responsibility for the pipe prices used in the appraisal?

A. No, I don't want that impression to prevail.

Q. You are still posing as an expert before this jury, aren't you?

A. I am not posing at all. I am here as an expert before this jury.

Q. All right; you are supposed to be an expert on pipe prices just as much as on anything, aren't you?

A. Yes, but I haven't got every possible figure with regard to prices before me.

Q. Well, give the delivered price, then, on 4-inch 11-pound pipe.

A. I can't even do that at this time on large lot deliveries. I haven't received that tabulation yet; it will be available here this evening.

Q. Can you give the price, delivered, on threaded and coupled pipe, for 6-inch 19-pound 45-pound pressure?

A. As of to-day?

Q. Yes, sir.

A. No. As I say, I do not have that tabulation here in this book.

Q. And for no other size threaded and coupled pipe? [fol. 901] A. Not as of to-day, no.

Q. Could you on lap welded?

A. Not on large lots, no. I haven't that computation yet.

Mr. Griffith: To make that clear, there are two prices prevailing, one on medium purchases and one on large lot purchases,—isn't that right, Mr. Biddison?

A. That is right; and that comparison has been worked up, but I haven't yet been furnished with a complete set of that comparison.

Q. Well, Mr. Biddison, can you give the prices for 4-inch 11-pound pressure threaded and coupled for medium sized purchases or small purchases?

A. The price as of January 1, 1933 per lineal foot for threaded and coupled 4-inch 11-pound pipe was \$.4782; as of June 11th the price is \$.4611.

Mr. Griffith: Do you mean June 11th, 1933?

A. As of June 11th, 1934.

Q. That applies to small lots?

A. It does.

[fol. 902] Q. In other words, from January 1, 1934 to June 11, 1934, the price per foot on this size of pipe declined from \$4.782 per foot to \$.4661 per foot?

A. That is from January 1, 1933 to June 11, 1934.

Q. 1933.

The Court: I think you had better repeat those figures, Mr. Fitzhugh, because I think you got the point in the wrong place, and the record will show up wrong.

Q. To make these two figures comparable before I restate them, do you have the price per foot for this size of pipe that prevailed January 1, 1934—in other words as of the date of your appraisal—that is the date of your appraisal, isn't it?

A. January 1, 1933 is the date of the appraisal, and the price as of that date is \$.4782 per foot.

Q. As compared with a price June 11, 1934 of \$.4661 per foot?

A. That is right.

Q. Now, what are the comparable prices for the same dates on six-inch threaded and coupled, 19.45 pound?

A. As of January 1, 1933, \$.8438; as of June 11, 1934, \$.8098.

Q. On the same kind of pipe, give the figures for 8-inch, 25.55 pound pressure?

A. As of January 1, 1933, \$1.1662; as of June 11, 1934, \$1.0883.

[fol. 903] Q. On 10-inch, 32.75 pound?

A. As of January 1, 1933, \$1.5548; as of June 11, 1934, \$1.4076.

Q. On 12-inch, 45.45 pound?

A. As of January 1, 1933, \$2.2168; as of June 11, 1934, \$2.0130.

Q. In other words, on all these sizes of pipe there has been a reduction in the cost of that pipe per foot since the time of your appraisal?

A. On this threaded and coupled pipe, yes, sir.

Q. The reduction on the 12-inch, for example, is approximately ten per cent, is it not?

A. On the 12-inch pipe, the price as of June 11, 1934 is 90.81 per cent of the price as of January 1, 1933.

Q. Yes, sir; approximately between nine and ten per cent reduction in the price?

A. Yes, sir.

Mr. Griffith: All these are prices on threaded and coupled pipe?

A. That is correct.

Q. Now, Mr. Biddison, all your prices on the field line equipment pipe include mill inspection, do they not?

A. They do.

Q. A large per cent of the field line equipment pipe was purchased from other owners, was it not—as a matter of historical fact?

[fol. 904] A. No; not to a large extent; some of it was.

Q. Yes, sir. Now, the field line pipe, or the pipe in the field lines, is the pipe that connects the well to the gathering lines, is it not?

A. It is.

Q. All such pipe is regarded by the company as being more or less temporary, at least as compared with the general transmission line equipment?

A. That is correct.

Q. For that reason, when a gathering line or field line is installed, it is not considered as permanent a proposition as the construction of the transmission line equipment?

A. That is correct.

Q. Now, isn't it the practice of the Company, as a matter of fact, to buy pipe that is non-mill inspected, and in many cases unpainted, for use in constructing the field lines?

A. I think not, from my inspection of the gathering lines and the Purchasing Department, I am convinced that practically all pipe that the Company buys is mill inspected if it is mill shipped.

Q. Regardless of what the Company's policy may be, Mr. Biddison, in the pipe that it purchases for the purpose of constructing field lines, would you have any possible way of knowing what kind of pipe the other owners from which your Company has purchased lines determined they would buy and put into their field lines?

[fol. 905] A. You can determine the type of pipe there by inspection.

Q. Well, hasn't your actual inspection showed that in a large number of cases in purchases of that sort where you bought from other owners that the pipe was unpainted?

A. It has shown that in some cases, yes.

Q. And don't you know, as a matter of fact, that other owners very rarely buy mill inspected pipe?

A. No; I don't know that. I presume that some of the pipe in the lines acquired by the Company by purchase from others probably was not mill inspected when it was laid.

Q. Don't you know, Mr. Biddison, that the other owners make a practice as an ordinary thing of simply trying to get good pipe that is already available and perhaps is second-hand pipe existing in the field?

A. Some of them may have done that.

Q. Nevertheless, you have included on all the pipe appearing in the Company's field line equipment a charge for mill inspection?

A. Yes.

Q. You have regarded all such pipe as being painted, have you not, Mr. Biddison?

A. No; the painting costs set out are not sufficient to completely paint all this pipe.

Q. How much of the pipe would be painted?

A. Well, the painting costs set out are, I think, just about [fol. 906] sufficient to cover the situation that really exists; that is, the bulk are painted, some are painted two coats, and some, I think, are, in actual fact, bare; one would about offset the other.

Q. You have included in your price an allowance for painting?

A. Yes; there is an allowance for painting.

Q. On the Chickasha lines, for instance, the allowance has been \$.019140 per foot for painting?

A. What is the figure you read?

Q. I think the correct figure is \$.019140 per foot.

A. That is correct.

Q. Is that right?

A. Yes; for 4-inch pipe.

Q. How did you find that allowance for painting, Mr. Biddison?

A. The cost used was determined from an analysis of the painting costs on over two million lineal feet of lines laid by the Company.

Q. How many feet?

A. Over two million feet.

Q. Two million feet?

A. Yes.

Q. Now, wasn't that two million feet of pipe one hundred per cent painted?

A. Yes.

Q. And by applying to the field lines of the Company as [fol. 907] they appear in the inventory the unit price of painting as found in that manner, wouldn't it amount to considering the field lines as one hundred per cent painted?

A. Yes; it would.

Q. Notwithstanding the fact that you know they are not that way?

A. Yes.

Q. Now, this same painting cost as applied to field lines is also used on the transmission line equipment, is it not?

A. It is.

Q. So that when we get to transmission line equipment we will encounter the same painting costs?

A. Same unit painting costs, yes, sir.

Q. Yes, sir. What price did you use for excavation for field lines in the Chickasha field?

A. .9756 dollars per cubic yard.

Q. Did you use that everywhere in the Chickasha field?

A. Yes.

Q. What did you use in the other Oklahoma fields?

A. In the Duncan Field, \$.6809, per cubic yard.

Q. What was that?

A. \$.6809 per cubic yard. The same for the Fox Field.

Q. What did you use in the Texas fields?

A. In the Panhandle Field, \$.9907 per cubic yard. The same in the Petrolia Field. In the West Texas Field, \$2.3327 per cubic yard.

[fol. 908] Q. That was \$2.3327?

A. \$2.3327.

Q. Didn't that last figure include rock excavation?

A. It includes all excavation, whether rock or earth.

Q. All of these figures do that?

A. Yes, sir.

Q. Is there any rock excavation in any of the fields besides West Texas?

A. Yes; there is some in the Panhandle, and there is some in the Fox area.

Q. What then, Mr. Biddison, is the classification of the different kinds of excavation as that applying to these fig-

ures; that is how much rock, and how much hand and machine excavation?

A. It is not classified. The determination of those figures is by a study of the excavation costs on well lines in the Fox Field, the Panhandle Field, and in the West Texas fields.

Q. So you have no idea of the percentage of rock excavation encountered in the West Texas field?

A. No; I have no classification on that.

Q. Do you have any way of knowing, then, Mr. Biddison, whether the lines you studied in the West Texas field are typical lines?

A. Well, they are fairly well scattered over the West Texas Field, and I think from the unit cost figure developed that they are typical.

[fol. 909] Q. But you say that, notwithstanding the fact that you do not know how much rock excavation is to be encountered in that field over all?

A. Yes.

Q. How much footage of line was studied?

A. I cannot give you the number of feet on that; but in the West Texas field it embraced 4,726 cubic yards; I don't have the details of the lineal feet before me.

Q. Did you pick out the lines that were studied?

A. No.

Q. Who did?

A. Mr. Steinberger made the study himself on such lines as the data was available for.

Q. Did Mr. Steinberger make the studies that were applied to the other fields?

A. Yes.

Q. So you take no responsibility, do you, Mr. Biddison, for the classifications of excavation in any of these fields, or for the studies made of the lines laid in the various fields?

A. I could not take responsibility for the classification, there having been no classification made; but I am satisfied as to the accuracy of the study made. I have been over that.

Q. Can you explain how Mr. Steinberger found his figure, \$.6809, for the Fox Field, or will we have to ask Mr. Steinberger that?

[fol. 910] A. I can give you the summary of the findings right here if that will meet your requirements.

Q. All right.

A. For the excavation of 1763.6 cubic yards of well lines in the Fox Field, the direct labor consisted of: Foremen, 42 hours at 60 cents; sub-foreman, 100 hours at 45 cents; laborers, 2281 hours at 35 cents; truck-drivers, 79 hours at 45 cents; amounting to a total for Direct Labor of \$904.10. To this is added for field supervision 5 per cent; liability and compensation insurance, 5.59 per cent; tools and construction plant expense, 10.9 per cent; the equipment, one ton truck, 80 hours at one dollar; team and driver, 30 hours at 75 cents; making a total for labor and equipment of \$1200.90, which is at the rate of \$.6809 per cubic yard.

Q. You are fairly familiar with the territory covered by the Petrolia and Fox Fields, are you not?

A. Yes, sir.

Q. Is there any more rock in the Petrolia Field than in the Fox?

A. No; I think there is not as much.

Q. Why would you use, then, 99 cents per cubic yard in the Petrolia Field, as against 68 cents in the Fox Field?

A. Well, the soil in the Petrolia Field is not the same as in the Fox Field, outside of the consideration of the relative amounts of rock.

[fol. 911] Q. What kind of soil do you have in the Petrolia Field?

A. The bulk of it is sandy red clay, and very hard.

Q. What kind of soil in the Fox Field?

A. My recollection of the Fox Field soil is that the bulk of it is light sandy loam, except for the rock portions.

Q. Did you figure, Mr. Biddison, hand excavation for all of the fields?

A. Well, the bulk of this work is hand excavation. There is some equipment with it; and the equipment could be of some assistance in ditching well lines.

Q. Just to sum up all these prices, for the different fields, Mr. Biddison, they represent hand, machine, and rock excavation, without any classification being made for the amounts of each?

A. That is true, except as to the use of the word- "machine excavation"; there is no machine excavation in it.

Q. Not a bit?

A. Not a bit. There may be some use of a plow in this connection, but no trenching machines.

[fol. 912] Q. Why is it that there is no machine excavation in these lines?

A. Because these lines are too short to justify the use of a machine.

Q. If the whole system were being reproduced at one stroke though, as you have intended it would be in computing your prices for the reproduction costs in your appraisal, it would be practical to use machine excavation, wouldn't it?

A. No, sir, it would not.

Q. Wouldn't you have a great deal of lengthy excavation of this sort?

A. No sir, you have a great deal of excavation in very short stretches, with long jumps between.

Q. How long does a line have to be before you can use machinery to practical advantage?

A. That depends on how far you have to move the machine.

Q. Well, suppose that the machinery is easily accessible, and it is right there available; how long would the line have to be before you would prefer the machine to hand excavation?

A. I wouldn't start up a machine to do a job on a line less than six inch, unless I had something in the neighborhood of three or four miles, even if the machine set right there.

Q. On page 482, field line equipment in the Duncan field, where Line D. N. 66, Suction Line is shown, how was that piece of construction done?

A. I don't know. I didn't see it done.

Q. Wasn't a machine actually used in the construction of that line?

[fol. 913] A. I do not know. I did not see it done.

Q. How long is it, as shown in your appraisal—that is, in round figures?

A. A little over seven miles.

Q. That is long enough to use a machine on, isn't it?

A. It might be, if you had a machine setting right there.

Q. Isn't there machinery of the sort needed, closely adjacent to the Duncan field?

A. Yes, but one would not be justified in putting on some of these small lines the size ditching machine you would use on some of those main lines. It would cost you more than it would to do it by hand.

Q. There are some long field lines in the Panhandle field also, aren't there Mr. Biddison?

A. Yes, there are some long field lines in the Panhandle.

Q. And there are quite a number of small machines up there directly adapted for that sort of work. Isn't that true?

A. I don't know about that. There may have been at various times.

Q. Is there any reason at the present time, even in piece-meal construction such as the company may do in that field right now why machine excavation shouldn't be used on those lines?

A. Ample reason. If you are going to ditch some of those well lines by machine, it would cost more there to move that machinery in and out than to do it by hand.

Q. I am talking about the long ones, now; those six to seven miles in length.

A. Oh, it is possible that there are one or two lines up [fol. 914] there in the Panhandle that you could ditch by machine, at an equal cost as you could in doing it by hand.

Q. And that has actually been done in the past, hasn't it?

A. I don't know.

Q. None of the excavation prices used on these field lines were used on the larger lines, such as transmission lines?

A. No, the cost developed here from a study of field lines was applied only to field lines.

Q. And the transmission line excavation prices were obtained from entirely different studies, were they not?

A. Yes.

Q. And as I believe you testified on direct examination, those prices were developed separately for each particular line?

A. The prices per hundred lineal feet, yes, based upon the size of the ditch and upon the proportions of machine work and hand work and rock work.

Q. Now, we would like to have, Mr. Biddison, the derivation of the costs for excavation by the various lines, and I don't know how would be the easiest way to get that. Would it be possible—how many sheets does it take to show that in your work papers?

A. Oh, about 75 to 100.

Q. Well, that is the detail.

A. I do not have it separated from some of the other developments at all. I don't know how many sheets the excavation work is on it, in a segregated amount.

Q. Well, we would like to have the development of the cost [fol. 915] per foot for excavation on each line, the classification and the price applied. The thought occurred to me,

Your Honor, if the witness could tabulate this and just hand it to us, or if the sheets were in condition so they could be photostated or if some such method were made available, it would shorten things and not be so burdensome to everybody.

The Court: Then I hope he will do that, if it will shorten things.

A. I will see if I can work out some of those requirements.

Q. How long would it take you to read that into the record, Mr. Biddison . . . would it be very extensive?

A. Yes, it would be.

Q. It would take three or four hours, wouldn't it?

A. Yes.

Q. I had rather avoid that, if we could.

A. Let me consider that this evening, and see what shape I can get that up in.

Q. All right, sir, and will you report that back to us in the morning?

A. Yes.

Q. You understand what we want, now?

A. Yes, I think I understand what you want.

Q. We want the kinds and classification of excavation, and the amounts, by lines, and the cost per unit.

A. I understand what you want, I believe.

Q. Now still looking at page 406, the field line equipment in the Chickasha field, you apply, do you not, a unit cost of [fol. 916] \$.033792 per foot for laying?

A. That is for laying and testing four inch threaded and coupled pipe, yes.

Q. How did you find the cost of laying, as applied to four inch pipe?

A. By estimating the cost of a gang of the requisite size to do this work, and by estimating the average performance per day.

Q. Did you give that on direct examination?

A. I think I gave substantially this same information, yes.

Q. You didn't give the gang, did you?

A. No.

Q. Will you now give, Mr. Biddison, the hypothetical gang you organized to estimate this cost? Now, Mr. Biddison, before you start, we want to get the cost for this item on the four inch, six inch, eight inch, ten inch and twelve

inch, and if it would be easier to give the gangs for each as you go along—I mean, for each classification, as you go along, we would like to have it that way. Just any way, so we get it for four, six, eight, ten and twelve inch.

A. We will start with the four inch gang: consisting of one foreman at \$6.00 per day; one stabber at \$4.50 per day, and 20 men at \$3.50 per day, and one man at \$4.50 per day, amounting to \$85.00 per day. Adding to this field supervision, 5 per cent, liability and compensation insurance, 5.59 per cent (and that is for the State of Oklahoma); tools and construction plant expense, 10.9 per cent, and we have a labor total of \$103.27, to which is added the equipment charges of one Ford pickup at \$7.50; one team and driver at [fol. 917] \$7.50, giving a total labor and equipment charge per gang per day of \$118.27. For an average performance of 3500 feet per day for this gang, the cost per 100 lineal feet is \$3.379.

On six inch pipe, the gang consists of one foreman at \$6.00 per day; two stabbers at \$4.50 per day and 29 men at \$3.50; and one man at \$4.50, amounting to \$121.00, to which is added field supervision, insurance, and tools and construction plant expense at the same percentages as for the four inch line, and equipment charges for one Ford pickup, \$7.50; two teams and their drivers, \$15.00, giving a total for the gang per day of \$169.50; which at a performance of 3,000 lineal feet per day is an average of \$5.650 per 100 lineal feet.

For the eight inch crew, I have one foreman at \$6.00; two stabbers at \$4.50. Forty-one men at \$3.50, and one man at \$4.50, amounting to \$163.00 per day; to which is added the allowances for supervision, insurance, tools and construction plant expense as for the other crews, amounting to \$198.03 per day sub-total; to which is added the equipment charges for one 1¼ ton truck, \$12.50; one caterpillar tractor at \$17.50; one Ford pickup \$7.50; two teams and drivers \$15.00, or total equipment charges of \$52.50, making total labor and equipment charges for the gang per day of \$250.53, which on a performance of 3,000 lineal feet per day is \$8.351 per 100 lineal feet.

For the ten inch crew, we have one foreman at \$6.00; two stabbers at \$4.50; 50 men at \$3.50; and one man at \$4.50, [fol. 918] amounting to \$195.50, to which is added the same percentages for the field supervision, insurance, and tools and construction plant expense, making a sub-total of

\$237.52; to which is added equipment charges in the same amounts as for the eight inch line, of \$52.50, producing a total labor and equipment charge per gang per day of \$290.02; and with a performance of 2,500 lineal feet per day, this would amount to \$11.601 per 100 lineal feet.

Mr. Griffith: Now, all those figures you have given, Mr. Biddison, apply to the State of Oklahoma, and embrace the Oklahoma workmen's compensation and public liability rates?

A. That is correct, and the figures per 100 feet are all slightly higher for the State of Texas, due to the difference in the insurance rate.

Q. Those figures illustrate the method used, though?

A. The same method for both states, yes.

Q. Now for the 12 inch gang.

A. For the twelve inch crew, we have one foreman at \$6.00 per day; two stabbers at \$4.50; 57 men at \$3.50, and one man at \$4.50, amounting to \$220.00 per day, to which is added the same percentages for field supervision, insurance, and tools and construction plant expense as for the other crews, producing a sub-total thereby of \$267.28. Adding to this the equipment charges identical with the eight and ten inch crews, of \$52.50, this amounts to a total per gang per day of \$319.78, which on a performance of 2,000 lineal feet [fol. 919] per day amounts to \$15.989 per one hundred lineal feet.

Q. Where, in these gangs, you have given one man at \$4.50 per day, Mr. Biddison, what does he do?

A. Well, he is officially designated at a collar pounder. With a hammer he pounds the collars as the joints are being pulled up, and he interchanges with the stabbers.

Q. How many hours do these men work—eight hours?

A. This is based on ten hours per day, of which in excess of nine hours would be spent in actual work on the job. A ten hours day does allow for time in transit, morning and night. The usual performance under this ten hour day schedule for this class of work is $9\frac{1}{2}$ hours of actual performance.

Q. The main difference, just looking through all these gangs now, there is one foreman in each gang, and there are two stabbers in all the gangs except the four inch gang, which gang has only one stabber?

A. That's right.

Q. And you say there is only one collar man, or collar-pounder in each of the gangs?

A. That is right.

Q. So that the only variation, the only real variation that you have in these different gangs, is in the common laborers in each gang?

A. Yes, that's right.

Q. And the common laborers run from twenty men, in the four inch gang, to fifty-seven in the twelve inch gang?

A. Yes.

[fol. 920] Q. How do you know, Mr. Biddison, that twenty men will be required as common laborers in the four inch gang to lay the daily performance you say would be obtained, of 3,500 feet?

A. I know from experience in laying screw pipe.

Q. Now, what experience are you talking about?

A. Well, I have had experience in screw pipe for something approaching thirty years, now.

[fol. 921] Q. Can you refer us to anything besides your general experience, Mr. Biddison?

A. Well, I could refer you to some specific experience besides my general experience.

Q. All right.

A. I have laid four inch screw pipe in a number of places, or had it laid for me.

Q. Well, pick out a place where you laid some pipe.

A. Well, I have had crews working for me in Ohio laying four inch screw pipe and in West Virginia laying four inch screw pipe and in Louisiana four inch screw pipe and in Mexico laying four inch screw pipe.

Q. Did you have the same size gang you are using here?

A. Sometimes larger and sometimes smaller.

Q. Well, did you ever have this identical gang?

A. I don't know whether I ever had the identical gang or not.

Q. So you can't say you ever had a gang of this exact size where you obtained 3500 feet of performance per day?

A. No, but I can say that, having had years of experience in laying screw pipe, I know what size gang it takes to make such performance as I have set up here.

Q. Can this be termed anything more than just an enlightenment guess?

A. Yes. I would dignify it by calling it a very careful estimate.

Q. I know; but this whole gang set-up of all these laborers, ranging from twenty to fifty-seven, the footages of the pipe the use of certain equipment, teams, drivers, Ford [fol. 922] trucks, or the necessity of a tractor, is all in the last analysis a figment of your imagination, is it not?

A. It is all the result of my experience, and I have had pipe laid under my jurisdiction of all of these sizes, threaded and coupled.

Q. Well, it represents nothing more than your opinion, does it?

A. It represents my opinion based upon my experience, and that is all.

Q. Well, I understand you to say you don't recollect that you ever did this size performance with this size gang?

A. I can't remember the size of the gang on any particular date ten or fifteen years back, but I know in general the size of crews required for any size pipe.

Q. Well, you put in daily performances of from thirty-five hundred on the four inch to two thousand on the twelve inch. Even if you had used the same daily performance for all your gangs wouldn't you have stood a better chance of arriving at the correct estimate by trying to regulate the number of common laborers to obtain the same performance?

A. Why, no. There is a limit to the performance which you can have with any size pipe, regardless of the number of men you may put on. I don't think you could put more men on the twelve inch crew and lay any more pipe, but with two crews you could lay more.

Q. Do you think if you increased the number of common laborers to, say, seventy-seven, you could get any better performance in the laying of that size pipe?

A. Very little. You might increase it some, but very little.

* * * * *

[fol. 923] Q. We were just talking, Mr. Biddison, before the recess about the way you found your cost for laying by the application of estimates made, using a hypothetical gang. Now, have you attempted to check the costs involved or the performance obtained on work of this nature actually done by the company as shown by the company's records?

A. No, but I have had checks on other work done by other people. For example, on laying eight and ten inch oil lines during the days when those lines were laid almost universally with screwed pipe an average performance of one hundred joints per day for a crew was considered very excellent performance.

Q. A crew of what size?

A. Larger crews than are set up in this estimate. It would be at least four additional men on the eight inch and six additional men on the ten inch than here set up. I laid ten inch in Mexico for oil lines, and the standard performance down there was one joint per man per day, and to get fifty-five joints laid per day required a crew of fifty-five men besides the foreman.

Q. What did it cost you to lay that pipe?

A. I can't tell you now; I don't remember.

Q. What kind of labor did you use?

A. Mexican labor.

[fol. 924] Q. You probably in construction in Mexico eliminated machinery almost entirely, didn't you?

A. Yes, and it is almost eliminated here, except just for the purpose of hauling equipment and making bends.

Q. Did you use any tractors, trucks, teams and drivers?

A. Yes, sir.

Q. Used tractors, did you?

A. No tractors—used trucks.

Q. You don't mean to say, do you, Mr. Biddison, that the use of Mexican labor would give you a comparable cost to the use of American labor on construction work done in Texas?

A. It may and may not. The case I cited where we laid fifty-five joints per day did not give a comparable result to what I would expect to have up here.

Q. But you have not made a check, if I understand you, Mr. Biddison, of any of the company's records of their actual performance obtained?

A. I have not. There is no data available to make any such check that I could find or that Mr. Steinberger could find.

Q. Well, the company has been laying four inch pipe for a number of years, hasn't it?

A. Yes, in small lots.

Q. And is still laying four inch pipe?

A. Yes, in small lots.

Q. The cost records of your basis of work are all present in the company's books and records as of the present time, aren't they?

[fol. 925] A. The over-all cost figures are: the classification is not.

Q. Now, the unit cost you use for hauling and stringing appears to be \$.017765 per foot. How did you find that cost? Before you answer that question, Mr. Biddison, is this the same development that you use in the case of transmission line equipment?

A. The same development, but applied to the length of haul determined for this particular field.

Q. Well, then it would be probably more logical to take up that figure when we come to Transmission Line Equipment, won't it?

A. Well, it doesn't make any difference, as I see it.

Q. Well, go ahead with it, then, and see what we get.

A. For this particular line, on which the pipe weighs eleven pounds per foot, the estimated cost per one hundred lineal feet for unloading, hauling and stringing is \$1.17765 per one hundred lineal feet. This is based upon a weighted mean length of haul for pipe in this field of 13.06 miles, and based upon that length of haul the cost per ton is \$3.23 per ton. This \$3.23 per ton is arrived at on the basis of \$1.512 per ton, plus \$.1312 per ton per mile of haul. Thirteen and six-hundredths miles times \$.1312 per ton per mile is \$1.7131, which, added to \$1.512, gives \$3.225, as I have computed it, but it is \$3.23 as used in the tabulation.

[fol. 926] Q. How did you obtain the figure \$.5121 for loading on the wagons?

A. This figure was arrived at from an analysis of the hauling expense incurred in the unloading, hauling and stringing of over 19,000 tons of pipe.

Q. Was that a study made by Mr. Steinberger?

A. The data was accumulated by Mr. Steinberger, and I have made the study and the determination of the division between the cost for the unloading from cars to trucks and from unloading from trucks to the ground, and for the portion of the expense which varies with the distance of haul.

Q. How did you make the division of the team time between—or the truck time between the unloading and the hauling?

A. That division was made by plotting the data from these jobs on coordinate paper, and finding how the cost varied

with the length of the haul. It is a graphic analysis proposition.

Q. All right, just describe that.

A. From which it is found that the cost of hauling is a substantially constant figure, plus an amount, which varies with the length of the haul, just as anybody would expect it to be.

Q. How did you go about plotting that graph?

[fol. 927] A. Well, for the various jobs on a sheet of coordinate paper I plotted as one ordinate the cost per ton, in dollars, for hauling pipe; on the other ordinate I have plotted the miles of haul; I have drawn a line representing the average locus of the points for seventeen different jobs of pipe hauling.

Q. Which job study was the biggest job?

A. The biggest job is Line 0-29.

Q. How close does the data from the work done on Line 0-29 come to the locus found on your whole study or on the graph you just spoke of?

A. In cost it lies substantially below the average locus of points. That is a short haul, 2.9 miles.

Q. Do you have any line that coincides fairly closely with the line finally found?

A. Yes, I have one that is precisely on it, and one which the dot marking the line cuts the line, and the spots are about equally divided on each side of the line.

Q. What is that line—what is the line that exactly hits your graph?

A. I am mistaken. The one which precisely hits the line is an average of two points which do not hit the line; they are at the same amount of distance per haul— $23\frac{1}{2}$ miles; they embrace a total of about a little over 3,000 tons—about 3100 tons.

Q. Well, for your graph to work out the way you intended [fol. 928] it to, Mr. Biddison, it would have to be true that irrespective of the sizes of pipe the cost per ton mile for hauling would have to be the same?

A. Yes.

Q. That is, it makes no difference whether you are hauling 2-inch pipe or 20-inch pipe, your ton cost of hauling that would be the same?

A. That is right.

Q. Well, do you have now, Mr. Biddison, any line, the study of which falls along the locus you found and used?

A. Yes; they are all very close to the line, except the two instances; and in those two instances the costs are far above the line.

Q. Well, which line study would you say comes closest to coinciding with your graph?

A. I believe the one that comes the closest individually is Line K-51, with 2526 tons—no, 1272 tons.

Q. At what cost?

A. At a cost per ton of \$1.986, or per ton mile of \$.3755.

Q. Does the total cost per ton of \$1.98, plus, include both the hauling and the unloading?

A. It does.

Q. And what was the mileage of the average haul?

A. 5.3 miles.

Q. You used that cost, then, of \$1.51 per ton mile for [fol. 929] unloading all through your study?

A. Yes, sir; that is slightly modified between Texas and Oklahoma due to difference in insurance rates. The Texas figure is \$1.532 per ton, plus, \$.1329 per ton per mile of haul. The Oklahoma figure is \$1.512 per ton, plus \$.1312 per ton mile of haul.

Q. Now, then, if you multiply 5.3 miles by .1329 and add it to the \$1.53, you get the computed cost on Line K-51, do you not?

* * * * *

A. Yes, that is right.

Q. And what is the total computed cost, then?

A. \$2.236 per ton.

Q. Now, that compared with the actual cost of \$1.986 per ton?

A. Yes, sir; and, specifically, the difference is accountable for by two things, one of them being that the figure for this line on the graph lies at a trifle below the adopted average line, and the other being that in making up the estimate I have allowed an additional charge to that shown by the graph to cover the unloading from cars to stock [fol. 930] piles and from stock piles to trucks again, because in such a program of construction of pipe lines as is contemplated in this appraisal it will be necessary, as was not necessary so far as I have been able to ascertain in the study of these hauling costs, to store some of this pipe in storeyards.

Q. Nevertheless, this shows, does it not, Mr. Biddison, that the computed cost as taken from your graph and applied to the line which you yourself say is the line—the graph of which is the nearest to the graph you used, shows your figures to be off 24 cents per ton?

A. No, it does not show my figures to be off at all; it shows a difference in there of about that amount.

Q. Well, it shows that the computed figures are off 24 cents per ton from the actual figures on the line that you say most closely approximates your graph.

A. Well, I think our difference is one of terminology. It shows that difference; it does not show my figures to be off; it shows that difference.

[fol. 931] Q. Well, I mean the actual figures show a difference of 24 cents over the computed figures.

A. Certainly.

Q. How much was allowed for unloading, per ton, into stock piles?

A. There is an allowance of 10 cents per ton for handling through stock piles, and an allowance of 5.7 cents per ton for loss of time of the gangs moving from one job to another.

[fol. 932] Q. Then the allowances are not for contingencies?

A. Well, they might be classed as contingencies; so far as the 5.7 cents per ton is concerned, it is an allowance for an item of expense which I feel certain would be incurred.

Q. Now, there still exists a difference between the 10 cents plus the 5.7 cents, which you just gave us, for a total of 15.7 cents, and the 24 cents; what is that difference?

A. I have an allowance on the movement of 10 per cent for contingencies in that item, which amounts to \$.0121 per ton mile of haul. In other words, the equation of the lines which I have drawn as the locus of the points found in this study is \$1.375 per ton, plus \$.128 per ton mile haul. Now, to this I have added for an allowance for handling to stock piles at the unloading points ten cents per ton, and for lost time in moving \$.057 per ton, and as a contingency on the movement \$.0121 per ton; producing

the results and figures found of \$1.53 per ton plus \$1.32 per ton mile haul.

Q. Now, in all the work that was done none of this 15.7 cents was actually incurred, was it?

A. I believe not.

Q. That was in a study of how many tons?

A. 19,564.32 tons; and we are applying the resultant figures to something like four hundred thousand tons, as I recall it.

Q. And was any of the ten per cent of the hauling costs which you allowed for contingencies actually experienced in that tonnage?

[fol. 933] A. No; this ten per cent is to allow for something that was not experienced; but probably would be when applied to a larger quantity.

Q. Yes, sir. And, of course, as is usually the case with an allowance for omissions and contingencies, Mr. Biddison, you might just as well have made a deduction for expenses that would not be incurred in the reproduction of the Company's property as well as those actually incurred?

A. I think that would be foolish to do that.

Q. Now, when you get down further in your computations and add up all these unit costs which have been made up of these smaller items which we have been breaking up here,—for example, cost of pipe, plus the cost of freight, including the cost of ditching, backfilling, painting, and so on, laying and testing,—you finally get to a total cost of \$.633528 per foot?

A. That is correct.

Q. Then to that you apply an additional amount for omissions and contingencies, do you not?

A. That is correct.

Q. In the amount of five per cent of that total?

A. Yes, sir.

Q. So that is a calculation of omissions and contingencies based on omissions and contingencies, isn't it?

A. To that extent, the omissions and contingencies item, with regard to this hauling, the ten per cent on the move-[fol. 934] ment end of it becomes increased by five per cent, or becomes ten and a half per cent.

Q. Isn't it a fact, Mr. Biddison, that if you were asked to take out the omissions and contingencies from your appraisal, having based omissions and contingencies on omissions and contingencies, that you never in the world could

tell what the whole amount is without several months of work?

A. Well, I think it would be considerably of a task to take out the amounts for omissions and contingencies, yes.

Q. Could you come anywhere near telling what the entire amount of omissions and contingencies in your whole appraisal amounts to?

A. I could hardly make a guess at this time. I could form a rational conclusion after some deliberation on the matter that would be fairly close.

Q. It would reach into millions, wouldn't it?

A. No; that is silly.

Q. You mean it would not amount to one or two million?

A. I think it would amount to considerably less than a million dollars.

Q. And you say that, nevertheless, after saying that you do not know the exact amount?

A. Yes, sir.

Q. And could not compute it?

A. I did not say that I could not compute it. I said that it would take a very long time to compute it.

[fol. 935] Q. Turn to your appraisal—Panhandle Field of Texas, listed as Field Line Equipment, on page 555. On that page you show P. N. 1 J. B. Clark—O. T. Gordon No. 1, a Tie In charge or cost of \$21.82, in this particular instance. Now, throughout the appraisal you have a tie-in cost for each field line, do you not?

A. Yes, sir.

Q. What is the basis of the tie in charge?

A. That is the expense outside of the straight away laying of the line incurred in connecting the line into the line into which it is tied in, and the amount set out is based upon an analysis of the cost of making such connections by the Lone Star Gas Company. In the Panhandle Field a study was made of the expense of making such tie ins on fifty lines at an average cost of \$21.82 per line.

Q. Are the charges for tie in found by a study of the actual costs?

A. Yes.

Q. Was an allowance made in the figures of that study for omissions and contingencies?

A. No.

Q. In a reconstruction new, Mr. Biddison, of the entire properties, is there any reason why the field lines could not be attached to and tied into the gathering lines at the same time the gathering lines were completed?

[fol. 936] A. None whatsoever.

Q. When construction on the field lines started?

A. None whatever.

Q. Wasn't that actually done in the way the Panhandle Field was developed?

A. I don't know which end they started at on those lines, but whichever end you start at you have to tie it in at the other, and that is what this cost represents. Even if you start at the gathering line it has to be connected—

Q. If the tie in should be made at the time the gathering lines are started, regardless of which direction you are going, whether you start with the field lines and construct them and come to the gathering lines, or whether you do the reverse of that, building the gathering lines, and going to the field lines, as soon as you construct one and go to the other, the gang would be there and ready to make the tie in, and you would eliminate the cost of having to send a gang back to make the tie in, and you would thus avert most of the cost shown in this appraisal?

A. This does not contemplate having a gang do nothing but tying in lines at all. This contemplates the gang ready to tie the line in.

Q. Why is the segregation for the tying in made then? It is put in here as a separate item?

A. Because it is estimated it would require that much expense to do the job of making that tie in. This twenty-one [fol. 937] or twenty-two dollars finishes the tie in expense, and your line might be one hundred feet long, or three or four miles long, and its cost will vary from causes other than expenses of this tie in. The tie in expenses would be fixed, regardless of the length of the line. That is the reason it is separated.

Q. Are there any Fullerton Drips appearing on the Field Line Equipment of the Panhandle Field of Texas?

A. I don't believe there are in the Panhandle Field. I would have to go through that to find out definitely.

Q. Well, pick out somewhere a Fullerton Drip and explain how that cost was found?

Mr. Griffith: There is one on page 406, Mr. Biddison, in connection with the M. G. 3 line to Alma Petroleum Company—Parks No. 2.

Q. Is that going to take up considerable time. If it is, you can take it up the first thing in the morning.

A. I would prefer to do that. It will really save time. I am not sure how long it will take to look it up.

Q. Do you know off-hand, Mr. Biddison, without referring to records, what you used for welding on the Fullerton Drips?

A. No, sir; I don't, without looking at the records.

Q. Now you say that that type of drip was developed by your Company?

A. It was developed by one of the employees of the Company.

Q. Is it a patented drip?

[fol. 938] A. I believe it is.

Q. Do you pay a royalty for the use of that type of drip?

A. I believe there is no royalty paid to him. I believe that drip was developed by him while he was in the employ of the Company, and therefore the Company has some proprietary interest in it and uses it without royalty; that is my recollection.

Q. Have you included in your unit price for these drips a charge for royalty?

A. I think not. I would have to look that up to be positive, and I will do so.

[fol. 939] Q. On yesterday, Mr. Biddison, we asked you for the development of the excavation figures you used by lines?

A. I am having that information copied off for you.

Q. And when we quit yesterday afternoon I believe I had asked you for the development of the price put upon the Fullerton Drip, which appears in several places in the appraisal. The particular one I believe that we had called attention to was the one on page 406.

A. This Drip on page 406 is 10 x 4 x 4 inches at \$263.04. The materials in this drip consist of 23 feet of 10-inch plain end pipe at \$1.1473 per foot, amounting to \$26.3879; 2.75 feet of 10-inch threaded and coupled pipe, at \$1.7053 per foot, \$4.689; 10 feet of 4-inch plain-end pipe at \$.3601 per

foot, \$3.6010; to the sum of this material cost is added four per cent for store's expense, and to the material cost is added the cost of doing the welding work, consisting of one [fol. 940] 10-inch orange peel weld, at \$12.2916; two 10-inch baseball type welds at \$2.60; three 10 x 10 x 10 T welds at \$8.60; one 10 x 4 swedge weld at \$13.017; one 4-inch circular weld at \$2.6141; two 4-inch 45-degree L welds at \$2.4577; one 4-inch T weld at \$3.4315; one 10 x 10 x 3 weld at \$2.9583; producing a total of \$117.8435 for this drip.

Q. Where you gave prices for pipe what were the weights involved?

A. Ten-inch plain-end, 31.445 pounds per foot; 10-inch threaded and coupled, 35.75 pounds per foot; 4-inch plain end, 10.79 pounds per foot. There is further included in this drip as installed 40 feet of 10-inch 35.77 pound threaded and coupled pipe at \$1.7053 per foot; 10 feet of 2-inch threaded and coupled pipe, 3.75 pounds per foot at \$.1763 per foot; one Lunkenheimer $\frac{3}{4}$ -inch 150-lb. brass screwed gate valve at \$1.5328; one Westcott 2-inch 500-pound working pressure gate valve Screwed at \$12.7711; One $\frac{3}{4}$ x $\frac{1}{2}$ inch bushing at \$.0185; six feet $\frac{1}{2}$ -inch threaded and coupled pipe .860 pounds per foot, at \$.0411; one 10-inch pipecollar at \$5.6198; one 10 x 2 drip cap at \$22.204; two 2-inch Ells common malleable, at \$.1966; one $\frac{1}{2}$ inch Street Malleable Ell at \$.0259; one $\frac{1}{2}$ x 8 nipple, threaded both ends, at \$.10358; two 2 x 8 nipples, threaded both ends, at \$.1207; one 2 x 10 nipple threaded both ends at \$.1452; one 2 x $\frac{1}{2}$ inch reducers at \$.1372; and the estimated cost of the installation at \$31.85.

[fol. 941] Q. Were the prices you used for the footage of pipe in the weights already given the same prices as used in the other places in the appraisal where the pipe appears?

A. Yes.

Q. Now, the designations "orange peel," "baseball-type", "Circular," "L", and "T" types, as applied to welds, refers to the shape of the weld, does it not?

A. That is correct.

Q. And all those are special welds, are they not?

A. Yes, sir.

Q. Now, Mr. Biddison, in working out your prices to apply for the special welds, did you work those prices out on the basis of lineal inch of weld?

A. Yes, sir.

Q. Did you use the same price per lineal inch on all the special welds?

A. Yes.

Q. And what was that price?

A. I was mistaken in stating that was the same price per lineal inch of weld on all sizes of pipe; it is not.

Q. Well, what is the correct statement?

A. Well, the correct statement is that for the various sizes of welds the amount of oxygen, and the amount of acetylene, and the welder's time in minutes, and the amount of rod, has been estimated for each size of pipe.

Q. You mean that for each size of pipe you took all those [fol. 942] components, and then from that worked to an estimated cost of a lineal inch of weld?

A. An estimated cost per weld on each size of pipe.

Q. Did you come down to the lineal inch of weld?

A. A lineal inch figure could be derived from this; but I do not have it set up here as a lineal inch figure.

Q. Did you make any differentiation between the special welds—that is, the orange peel and baseball welds, on the same size of pipe, from the ordinary circular weld?

A. Yes, sir.

Q. Now, how did you work that out?

A. From the amount of material required, and the amount of time required; based on a per lineal inch basis, those are apportioned on the various sizes of pipe, so that for a baseball weld we have an entirely different figure than in the case of a plain circumferential weld.

Q. That is per lineal inch?

A. Yes.

Q. Did you use your same cost for special welding in City Gate measuring station installment as you did on these Fullerton Drips?

A. On that special welding, yes, sir.

Q. Did you use the same costs for special welds where special welding occurred on the transmission line equipment?

A. For the welding up of special fittings only; not for welding of the pipe line itself.

[fol. 943] Q. I am talking just about the special welds now?

A. For these costs we used special welds for special fittings.

Q. Wherever they occurred—on transmission lines or where?

A. Yes.

Q. In other words, these prices which you used on the Fullerton Drip for special welding are the prices that you used on special welding throughout your appraisal?

A. That is correct.

Q. How did you find that the cost of the 10-inch orange peel weld would amount to \$12.29 plus?

A. Which well—the orange peel?

Q. Yes, sir, 10-inch orange peel, I believe you gave \$12.29—perhaps a little more.

A. It is computed that on a weld of this size there would be 185.58 inches of cutting to be done; 61.86 inches of welding to be done; that the requirements for cutting are oxygen 48 cubic feet, acetylene 12.4 cubic feet, welder's time 110.5 minutes; that for welding there would be required oxygen 69.3 cubic feet; acetylene 63 cubic feet; rods 4.8 pounds; welding time 147 minutes; for a total of oxygen 117.30 cubic feet, acetylene 75.4 cubic feet, rods 4.8 pounds, welder's time 257.5 minutes. Pricing the acetylene at \$.01316 per cubic foot we have for the oxygen \$1.5437; pricing the acetylene at \$.0306 per cubic foot we have for the acetylene \$2.3072; pricing the rods at \$.11154 per pound we have for the rods \$.5354; and with the labor at \$.0307 per minute, we have \$7.9053; or a total for this weld of \$12.2916.

[fol. 944] Q. How was the amount of oxygen estimated, Mr. Biddison?

A. That amount of oxygen was estimated from data furnished by the Linde Air Products Company as to the requirements for oxygen and acetylene on shop welding work.

Q. Is the estimate of the amount of oxygen made on the basis of per lineal inch of weld?

A. Per lineal inch of material of the various thicknesses, yes.

Q. Well, what differentiation did the Linde people make as to thickness in giving you the estimate?

A. Well, the thicker the material, the more oxygen it would take per lineal inch of cutting.

Q. Well, did the Linde people furnish you a table that was graduated by thicknesses?

A. Yes.

Q. Who are the Linde people?

A. They are the largest manufacturers of materials and equipment for oxygen acetylene welding in the United States.

Q. They are the originators, are they, of the Linde Welding process?

A. Yes, sir. I might say that what is called the Linde weld is not suitable for this class of work at all.

Q. Well, the Linde weld is an electric weld?

A. No, sir; it is an oxygen acetylene weld.

Q. What is it that is distinctive about the Linde weld?

A. The character of rod used and a difference in the type of flame used in welding, and with that type of weld in such [fol. 945] places as it can be used smaller amounts of rod are required and lesser amounts of labor.

Q. What kind of welding tip is used in that process?

A. A special type designed for that particular class of rod.

Q. Well, now, were not these figures that you used and which were put out by the Linde people applicable to welds other than the Linde process?

A. Why, the figures which I have used here will apply properly, I think, to any of the ordinary welding processes. They will not apply to what is known as the Linde weld, nor to what the Air Products Company calls their—I believe they call it their fleet weld; it is supposed to be a fast welding process, with some more such designation for it. The ordinary welding time will apply here, regardless of who makes the oxygen, acetylene or the rod. These are the amounts of time and material for ordinary welding.

Q. Did the Linde people also furnish you compilations for the length of time of laborers and materials to be used?

A. They furnished a compilation on that, but there have been some substantial modifications made from that.

Q. Up or down?

A. Well, in some cases one way and in some cases another.

Q. Did they furnish you an estimate for the amount of time or the number of minutes to be used in making various welds?

A. Well, their tabulation which they furnished had some data as to the time for making various classes of welds, but [fol. 946] a great many of these welds shown here are not of the classes shown in their tabulation at all.

Q. Well, how did you find the estimate of 147 minutes supposed to be consumed in making this particular weld?

A. It is derived primarily from a tabulation furnished by Linde after a conference with welders to determine the proper classification.

Q. Well, did you adopt the Linde estimate?

A. Not entirely.

Q. What was the Linde estimate of the number of minutes?

A. I don't have it here; I can't tell you now.

Q. Didn't you use exactly, Mr. Biddison, the Linde estimate appearing on their sheets?

A. In some cases we did, and in some cases we did not.

Q. Well, why would there be any variation?

A. Well, in some of these cases the amount of time required was not shown by the Linde tabulation.

Q. I see. But where it was shown you used the Linde computation, did you not?

A. Usually so. We made some modifications from it.

Q. Were the prices for materials also furnished by the Linde sheets?

A. Furnished by Linde quotations.

Q. By the Linde quotations?

A. Yes.

Q. Is that the source of your material units?

A. It is.

[fols. 947-949] Q. For labor you used \$.0307 per minute?

A. Yes, sir.

Q. Did that come from the Linde sheets?

A. No, sir.

Q. How was that found?

* * * * *

[fol. 950] A. I set up a welder at one dollar per hour; welder's helper at forty cents per hour, producing a total of \$1.40 per hour. To this has been added five per cent for supervision, seven and a half per cent for use of tools and construction plant expenses, 8.48 per cent for liability and workmen's compensation insurance, and ten per cent to cover loss of pipe and materials in bad welds, producing thereby a total of \$1.84 per hour, which is .0307 dollars per minute.

Q. Your installation cost was \$31.85, I believe you said?

A. Yes, sir.

Q. How did you find that?

A. On the installation of twelve drips, requiring ten hours foreman's time; forty-five hours assistant foreman's time; thirty-two hours laborers; fifty-two hours truck drivers; field supervision, seven and a half per cent; insurance at 8.48 per cent; tools and construction plant expenses at 12.1 per cent; thirty-five hours use of truck, and an allowance of five per cent for all contingencies. The total cost of installation of twelve drips was \$401.00, which is \$33.42 each.

[fol. 951] Q. In checking through your Field Line Equipment, Mr. Biddison, there seem to be field lines included which go to wells which have been abandoned. Why would the field line be included if the well had been abandoned?

A. I had a very exhaustive examination made of that particular situation, and I am sure that there are no field lines included in this valuation which were not in use as of the date of the valuation. Now, it is true that you will find in a few instances field lines listed which at one time were connected to wells to which they are not now connected. But I am positive there are no field lines listed in this inventory which were not used and useful and in service as of the date of the inventory.

Q. Now, where you have included, then, as of the date of your appraisal, Mr. Biddison, lines which are now no longer used, are you willing to make some correction in your appraisal on that account?

A. Why, certainly, any material—any item in this appraisal which since the date of the appraisal has ceased to be used and useful would properly be deducted in the ascertainment of the value as of this date.

Q. Do you have that now?

A. On the other hand, any items added would also be properly added.

Q. Do you have with you now, Mr. Biddison, a list of the [fol. 952] wells that have been discontinued since the date of your appraisal?

A. No, I do not.

Q. On page 467—correction: on page 474, the line of the Reavis No. 5-A, where you show 264 feet of 4-inch line,—I will ask you if it isn't a fact that in the appraisal of this date you have no Reavis No. 5-A well.

A. Well, I couldn't answer that question.

Q. Can't you check back against your wells?

A. Well, I don't have the data here at all as of to-day.

Q. I am talking about as of the date of the appraisal.

A. There is no such well listed, that is correct.

Q. Well, then, there shouldn't be any line, should there?

A. Yes, sir, there should be a line. That line was investigated and found to be in service as of the date of the inventory.

Q. Now, what was it serving? It wasn't serving the Reavis 5-A, was it?

A. Well, I can't tell you without having a map of that line before me, which I do not have; but I am certain that that line was in service, because I had a very careful check made of well lines which were in service and which had gone out of service.

Q. Well, is it your testimony, now, Mr. Biddison, that this line is now serving some other well than the Reavis [fol. 953] No. 5-A?

A. My testimony is that as of the date of this valuation every item of such equipment in here was carefully checked for the determination of the question as to whether it was used and useful as of that date, and I believe this inventory is correct as of that date.

Q. So you would not accept a correction on account of this line?

A. Why, not until I had better information than you have suggested to me, no.

Q. What well does D. N. 36 serve? I believe that is on page 468.

A. Well, as shown, it serves Armstrong No. 5, and acts as a by-pass across to another line.

Q. The Armstrong No. 5 Well has been abandoned, hasn't it, and was abandoned as of the date of your appraisal?

A. Apparently so.

Q. On the preceding page—467—D. N. 34, the line to Bondurant No. 2 Well,—that line had also been abandoned as of the date of your appraisal, had it not?

A. Apparently so.

Q. What well was this line serving?

A. I can't tell you, but the line was evidently used and useful at that time, because the line was investigated at that time for the determination of that specific question.

[fol. 954] Q. Well, now, so we can clear this matter up, Mr. Biddison, I will read off the lines which appear from our information to be lines that have in the past served wells which were abandoned and are still abandoned as of the date of your appraisal: D. N. 34, D. N. 36, Fox 49, Fox 50. An inspection of the equipment listed in your appraisal shows a number of gas wells and well lines upon which there appears no meter. Why would those wells and lines be without meters?

A. Well, I can not answer you with respect to any specific well right now, but it may well happen that wells be temporarily disconnected, and during this temporary disconnection the meter be removed. That is not an unusual operation.

Q. Well, the absence of the meter shows the well is not in use, doesn't it?

A. Not in use at the time the meter was removed.

Q. And the absence of the meter on the line would show that the line was not being used, would it not?

A. Not necessarily. Some portion of that line may have been in use.

Q. All right.

A. I don't think a temporary non-use of a line removes it from the class of equipment used and useful in public service, however.

[fol. 955] Q. Now, Mr. Biddison, I will give you a list of the wells and lines wherein no meter appears, and ask you to make a check as to whether or not these wells and lines were actually being used and useful as of the date of your appraisal: The M. G. 14, M. G. 15, D. N. 10, D. N. 17, D. N. 22, D. N. 23, D. N. 34, D. N. 36, D. N. 47, D. N. 56, D. N. 58, D. N. 61, D. N. 66, and D. N. 70; and the following lines leading to wells in the Fox Field: 49, 50, 53, and 75; and the following lines leading to wells in the West Texas Field: 2, 17, 99, 100, 102, 103, 108, 109, 151, 185, 187, 202, 206, 214, 215, 223, 224, 225, 254, 282, 287, 289, and 299. Now, the meter on those seems to be missing from both the well and the line. I will give you a list of Gas Purchase Stations where there is no meter, and ask you to make the same investigation as to them: Line K. C. F., Gulf Production

Company, Taylor Plant; Line O. D., Phillips Petroleum Company, Stephens County—

A. Just a minute. (Witness makes memorandum.) All right.

Q. Line O-D-A, Gulf Production Company, Brooks Hanlon Plant; Line O-D-C, Hanlon Gasoline Plant No. 2; O-E-B, Humble Atlantic Gasoline Plants; Line O-E-C, Caddo Compressing Station; Line O-G, Phillips Petroleum Gasoline Plant; Line O-L-A-A, Robinson No. 1, E-2—cor-[fol. 956] rection, No. 1 and 2. Line 26, Hagaman Well No. 6.

A. Hayden?

Q. Hagaman, H-a-g-a-m-a-n. Line 30-A, T. G. Shaw-Briden No. 1 Well; Line 224, Simmons Ward No. 2 Well.

A. All right.

Q. Where wells were purchased, Mr. Biddison, at a time—just a month or so or a few months before the date of your reproduction appraisal, wouldn't you feel yourself bound by the cost to the Company of those wells and property?

A. No; I would feel bound by it if I were setting up reproduction cost.

Q. Have you in your appraisal anywhere depreciated gas well equipment,—casing in the well, for example?

A. Not in my reproduction cost new estimate; no.

Q. Did you in your final fair value—your depreciated value or your fair value computation?

A. I did not, on account of the method used by Mr. Huley in the determination of over-all values of gas reserves and gas wells, the method being one designed to produce a present value figure.

Q. On page 98, on the Adams and Price—Burcham No. 1 Well, you show a reproduction new cost of \$12,647.20, do you not?

A. Yes, sir.

[fol. 957] Q. Now, as a matter of fact, if this well actually cost the Company \$5001.25 at just about the date of this appraisal, wouldn't you be willing, Mr. Biddison, to accept a correction for the difference between \$12,647.20 and \$5001.25?

A. No, I would not be willing to accept any such correction as that. In the first place, I don't know that that figure you cited is the purchase price of the well—

Q. Well, granting for the moment that it is, Mr. Biddison, the correct figure—

A. Well, I am not going to grant that it is.

Q. I know, but just for the purpose of finding out how you theorized on it,—if that is the correct cost to the Company at a time just about the date of your appraisal, wouldn't that show the true value of the well and equipment?

A. No; I have set out here the estimated cost to reproduce this equipment in toto. Now, the fact that the Company may have picked up one or two bargains in gas wells doesn't affect my idea of the value of the property one iota, and certainly does not affect the cost of reproducing it.

Q. Your reproduction cost new appraisal, then, proceeds on the theory, does it not, Mr. Biddison, that the Company never got a bargain in its life?

A. No, my reproduction cost new appraisal does not proceed on that theory at all.

Q. And if the property were being reproduced in wholesale, notwithstanding the fact that you would be bargaining for an enormous amount of property and an extremely large number of wells, that out of the whole outfit you would never get a bargain in the bunch?

A. No, it doesn't proceed on any such theory as that at all. It proceeds on the theory that these wells would be developed as wells are normally developed, and I have estimated the cost of reproducing them on that theory.

Q. Well, what would be the difference in buying the Adams and Prince-Burcham No. 1 Well, the whole well, at \$5,000.00, and turning around and finding what it would cost to get that well at, in a reproduction, by pricing the individual things that go into the well?

A. Well, I think if the Company were able, by virtue of some peculiar circumstances, to buy for \$5,000.00 that which was worth over \$12,000.00 that it does not affect its value at all.

Q. In other words, you think that the cost of what, or the price that a purchaser would pay a seller is in no way indicative of value.

A. Cost and value are not identical. They may at some times be the same.

Q. Well, doesn't it stand to reason, Mr. Biddison, that if [fol. 959] the seller of this well was willing to give it to your Company for \$5,000.00 that it actually did not cost him more than that?

A. Well, if the Company bought it for \$5,000.00, well then, that is what it cost. That is quite apparent. But as to its value, I don't think that the purchase price is necessarily a measure of its value. If the Company had paid \$35,000.00 for that well, I don't think that would have constituted its value.

Q. All right. Do you believe that the man who sold you this well sold it to the Company at a loss? He made his fair profit, didn't he?

A. I don't know anything about what profit he may have made in the past, or whether he made any or not, or whether he took a loss or took a profit. I don't think that is any criterion of its value.

[fol. 960] Q. All right; turn to your section, Transmission System Measuring Station Land. On page 971, the first item appearing on that page is city gate station site in Wilbarger County, Texas, one lot priced at \$175.00. How much of that price is the expense of making the purchase?

A. \$25.00.

Q. Did you use \$25.00 on every bit of property that is shown in your appraisal?

A. No, sir, I used fifteen per cent of the purchase price, but not less than \$25.00. If the fifteen per cent were less than \$25.00 I used the \$25.00, but if the \$25.00 were less than the fifteen per cent, I used the fifteen per cent.

Q. Then this site cost \$150.00 plus \$25.00 for purchasing expense?

A. That's right.

Q. If it had cost a Thousand Dollars, Mr. Biddison, would you still have used \$25.00?

A. No, sir; I just explained that I would have used fifteen per cent in such a case.

Q. All right, sir; how did you find your fifteen per cent allowance with a \$25.00 minimum, for these different acquisition costs?

A. Well, that is my idea of what it would cost.

Q. Why would it cost any more, Mr. Biddison, to buy a parcel of land that cost you \$500.00, than it would to buy one that cost only \$300.00?

A. Well, \$500.00 is considerably more money than \$300.00 is, and the negotiations would take longer and it would be [fol. 961] more difficult to conduct the negotiations and obtain the land at a satisfactory price.

Q. Do you figure that for that small difference in the price, it would take more time and cost more to make the purchase?

A. It might not in all instances, but on the average it would. As a general rule, the cost increases for expense of purchase as the price increases, on an average.

Q. The abstract to be examined is no longer in one case than the other, is it?

A. Not necessarily.

Q. The length of the abstract does not depend on the price paid for the land, does it?

A. No.

Q. And you some times have a very long abstract on a very small parcel of land?

A. You may have.

Q. And the converse is also sometimes true?

A. Yes.

Q. Was any attempt made to relate this fifteen per cent allowance with a \$25.00 minimum to the actual costs of the company as shown historically by their books?

A. No. The matter was discussed, however, *the* the members of the land and lease department, who were familiar with the costs of making such purchases.

Q. Do you mean that is the source of your estimate?

A. No, I do not mean that is the source of my estimate; but the information I got from them is confirmatory of the [fol. 962] data which is here used.

Q. Well, have you or anybody else, Mr. Biddison, for the purposes of this appraisal, tried to relate the prices or the costs you have actually used in your appraisal, to the costs of the company on the books?

A. No.

Q. I mean, has somebody dug out the actual costs of the company as shown by its books, and tried to relate that to the costs used in this appraisal?

A. No, that has not been done.

Q. On page 992, where you show the city gate station at Grapevine, Texas, for example, what are the improvements that you have evaluated on that station?

A. They consist of Elwood wire fence, with corner posts and gate posts; driveway gate; the gate chain and Best Universal Lock; gravel driveway, and a sixteen inch pipe culvert.

Q. Any gravel or walkway or anything of the sort?

A. Gravel driveway, yes.

Q. How much have you figured on the gravel driveway?

A. \$18.07.

Q. How much is that per cubic yard of gravel?

A. It is \$2.03 per cubic yard, on 8.9 cubic yards.

Q. Well now, without taking up in detail each one of these stations, Mr. Biddison, how did you find the gravel price for each of these stations?

A. That price is obtained by quotations from dealers at nearby points, handling that class of material.

[fol. 963] Q. Do you mean that you have used a different price of gravel for each station?

A. Yes.

Q. You priced out on all these parcels of land the shrubbery and all that sort of thing, didn't you?

A. Where such shrubbery existed, yes. In this particular block there is no shrubbery existing.

Q. How did you go about pricing that sort of thing out in this appraisal, Mr. Biddison?

A. Well, the inventory showed the number of these various items of shrubbery, rose bushes, or whatever they might be. My recollection is that rose bushes were about 35 cents apiece, installed, and that shrubs for hedges were at, I believe, about ten cents apiece installed.

Q. You priced out the shrubbery at the Grapevine, Texas, station, didn't you?

A. There is none shown for that station in the inventory.

Q. Well, where is there a station that you show as having some shrubs? Don't waste any time on it.

A. Here is one right here, the first one I came to in leafing through here is Clifton, in Bosque County.

Q. What do you show for that station?

A. Ninety-seven hedge bushes, at fifteen cents installed, and seven cedar trees at \$4.00 each installed, and one willow tree at \$1.00 each installed.

Q. Is there any grass on that plot?

[fol. 964] A. I think not. It is not so inventoried.

Q. Well, where you have got sod at all, you have priced it out, haven't you?

A. I think so. I think that was priced as sown seed, is my recollection of it.

Q. Wherever you have a tree that naturally grew on the plot before you ever acquired the property, you have priced it out too, haven't you?

A. No.

Q. Well, these cedar trees at Clifton, for example; weren't they already on the plot before you acquired it?

A. I think not.

Q. Well, you didn't go back to check the records on it, did you, to find out about it?

A. Well, I don't remember enough about that particular station to say definitely.

Q. What kind of a hedge is this one, where you have 97 bushes?

A. It is mainly privet hedge.

Q. Do you mean to say, Mr. Biddison, that the man checking out the inventory actually got into the hedge to find out where the roots were?

A. No, I don't mean he actually dug into the hedge to find the roots. I mean that they counted out the number of bushes making up the hedge.

Q. You have a number of barberry bushes also on some of these tracts, haven't you?

[fol. 965] A. I think so. I can not pick out a location right now where they have them.

Q. You have seen a barberry hedge, haven't you?

A. Yes, I think I have.

Q. And you know it is one great big tangle, isn't it?

A. Yes, I would say so.

Q. Do you mean to say that a man actually got down and dug into that hedge to see just how many roots had been planted, or what made up that hedge?

A. I mean they counted the number of bushes in the hedge.

Q. Isn't it a fact that somebody just went out and made a guess at about what he thought ought to be there? And that's the way the determination was made?

A. We have the determination made of the number of plants set out, the number of bushes.

Q. Now all of this cost for shrubbery improvements, grass, rose bushes, trees and so forth, have been currently charged as operating expenses, ever since the time the company started making these improvements. Isn't that true?

A. No, I am sure that is not true.

Q. Do you mean that those costs have been capitalized?

A. I mean that some of them have been. Some may have been charged as operating expenses; I don't know.

Q. All the cost of maintenance has gone in as operating expenses, has it not?

A. I presume it has; it should have been.

[fol. 966] Q. Then is the cost of growing that shrubbery, improvements, and trees—that has all been charged as maintenance and operating expense?

A. I suppose all the maintenance cost has been so charged. It should have been, I know.

Q. And the cost of creating that new value has been included in the operating expenses and the costs of operation, as presented in this case heretofore by Mr. Hulcy?

A. I don't know anything about that.

Q. Well, you know that is the fact, don't you Mr. Biddison?

A. No, I do not know that is a fact, and I do not see that it is material if it were. The point is, whether this property exists there today, and what is its value.

Q. And that, regardless of whether the company has already been compensated for it or not, or is being compensated for it currently?

A. I think if a company were compensated for a piece of property it would not be the owner of the property any more. You do not ordinarily get paid for something and still own it.

Q. What is the next item of property—transmission system measuring station leaseholds, isn't it?

A. Transmission system measuring station leaseholds follow transmission system measuring station lands.

Q. On page 1052, the first leasehold on that page you show in the amount of \$85.94. What was the original cost of that leasehold, Mr. Biddison?

[fol. 967] A. The consideration paid was \$100.00.

Q. Now the amount showing here of \$85.94 shows that this has been depreciated?

A. Yes.

Q. How much did you depreciate this—or how did you go about computing the amount of depreciation?

A. This happens to be the identical one that I explained in detail on direct examination.

Q. Well, I beg your pardon.

A. To the \$100.00 consideration, I added \$25.00 for the cost of acquisition, giving a total of \$125.00 cost; and the term of the lease was twenty years, of which six years and

three months had expired, or a ratio of cost expired of \$39.06, producing a net figure of \$85.94.

Q. You did depreciate these leases on the amount of expired lease on all of them?

A. Yes, and as I stated before, I think that is erroneous procedure, and should not have been done, and it was done through a misunderstanding of instructions.

Q. In the case of compressing station leaseholds, I believe you say you did not depreciate those?

A. That is my recollection; that it was not done in that case.

Q. Suppose you had a lease on a private dwelling, Mr. Biddison, that was to run for one year, or twelve months. Would you say that lease would be more valuable to you than a lease on the same dwelling that was to run only one month?

[fol. 968] A. I didn't get that question straight.

(Reporter repeats question to witness.)

A. I would pay more money for a long term lease than for a short term lease, certainly.

Q. It would be worth more to you?

A. Certainly it would.

Q. And you have used an entirely reasonable method in depreciating leaseholds in the case of transmission system measuring station leaseholds?

A. Yes, but I think your example is confusing the item of land rent with the payment for a long term lease. They are two different propositions. Now, I conceive of this money paid for this lease as an acquisition of a right for the use of that property, and that right to use it is just as valuable at one stage of its use as at another stage of its use. It is true the company should be accruing in its retirement reserve a fund for the retirement of this leasehold at the end of its life, but I do not see that the value, which was paid for initially, changes at all throughout the life of the lease.

Q. Whoever heard of anybody setting up a retirement reserve except to take care of a loss in value. Isn't that the purpose of a retirement reserve?

A. Certainly.

Q. And isn't the fact that your company sets up a reserve to take care of this loss of value one which shows that you

recognize as part of your accounting system that the value is being lost as the time is used up?

[fol. 969] A. No sir, it does not. It recognizes that the loss will occur at some time in the future, and in order to distribute that loss over the entire life of the property, you set up a reserve as it is used.

Q. Instead of saying that you think a correction should be made back upon the value as found by you of the transmission system measuring station leaseholds, don't you think a correction should be made to show the depreciation also occurring on your compressing station leaseholds?

A. No, sir, and I have stated directly to the contrary. That may be your opinion of it, but I am directly opposed to that opinion and have so stated.

Q. All right; some of these parcels of land are used not only by yourself but by other people; isn't that true?

A. I don't remember definitely with regard to leaseholds. There is some joint use of fee lands in the transmission system.

Q. Well, there is of the leaseholds too, isn't there? Take the leasehold at Tipton, Oklahoma, for example.

Mr. Griffith: What page, Mr. Fitzhugh?

Q. The same page—1052.

A. I don't know whether there is any joint use in that station or not.

Q. At any rate, Mr. Biddison, where there are lands, whether they are owned in fee or covered by leases, you have included in your appraisal that land as if it were 100 per cent used by the Lone Star Gas Company?

[fol. 970] A. That is true, yes; and I presume some of these leases are the same as the land; that is, where they have structures jointly owned by the Lone Star Gas Company and the distributing company.

Q. About half of the land covered in your appraisal is used jointly by the Lone Star Gas Company and some other person or company?

A. I don't know whether there is half of it or not, but a very considerable number of the tracts.

Q. But in no case have you made any deduction in the value by reason of the use made of it by other people or the fact that the land is not used by the Lone Star Gas Company alone?

A. That is correct.

Q. Turn to transmission system measuring station structures, and that is Volume 3. Now the station showing on page 1219 as the College Station measuring station structure is an example of one of the concrete type of structures, is it not?

A. Yes.

Q. How did you find the value for that structure in the amount of \$1,391.43?

* * * * *

[fol. 971] A. This building is 9 feet by 46 ft. 1 in. in plan, and 7 ft. 6 in. high. It is a reinforced concrete structure, with concrete floor, walls, and roof, painted two coats inside and outside, contains six windows, two doors, four ventilators. The total cost is estimated at \$1391.43. It is owned jointly by the Lone Star Gas Company and the Community Natural Gas Company, the Lone Star Gas Company owning 75 per cent of the building, so the Lone Star interest is 75 per cent of \$1391.43, or \$1043.57. The total cost is developed as follows: Excavation, 2.7 cubic yards at \$1.09, \$2.94; foundation forms, 255 square feet at \$.11, \$28.05; reinforced concrete, 5.86 cubic yards at \$18.76, \$109.93; earth fill for floor, 8.91 cubic yards at \$.60 per cubic yard, \$5.35; finish concrete floor, 361 square feet, six inches thick, at 37 cents per square foot, \$133.57; forms for walls, 1622 square feet at \$.16, \$259.52; reinforced concrete in walls, 13.05 cubic yards at \$18.76, \$244.82; forms for roof, 454 square feet at 16 cents, \$72.64; reinforced concrete in roof, 8.37 cubic yards, at \$18.76 per yard, \$157.02; two five-panel doors, 6 ft. 1½ in. by 31 in. at \$5.04 each installed, \$10.08; door framing, 2 x 6 No. 2 lumber, .3200 board feet [fol. 972] at \$5.66 installed, \$1.81; blind stock, 31 feet at \$.06, \$1.86.

Q. Those are the major items, aren't they?

A. Yes. I had better add six windows at \$11.21 each, \$67.26. That constitutes the major items, although the steel ventilators built in amount to about \$75.00.

Q. Do all these individual items—these you have given us and the smaller items—add up to give \$1391.43 for the total value of the structure?

A. Yes, sir. I think I should add sand cement finish inside and outside on walls and roof amounting to \$71.96; that is

257 square yards at \$.28, and the painting 25.29 squares at \$3.74, is \$94.58.

Mr. Griffith: That is two coats?

A. Yes, sir.

Q. What are the approximate number of yards of concrete in the whole station?

A. Exclusive of floors, a little over 28 yards.

Q. That represents, does it not, Mr. Biddison, a fairly good order of concrete work?

A. Yes, sir.

Q. And you applied to all of that cubic yardage a cost of \$18.76 a yard for concrete?

A. Yes, sir.

Q. Now, the material that went into that concrete work was material purchased locally, was it not?

[fol. 973] A. I don't know where the actual materials were purchased for the original construction, but the prices used in this estimate are prices from Bryan, Texas.

Q. From what places in Bryan did you obtain your quotations?

A. John F. Grant.

Q. Did you obtain prices from any other place?

A. No.

Q. Are the prices competitive?

A. I believe so.

Q. What I mean is, there are other persons doing business that could furnish the same materials at Bryan?

A. Well, I am not sure; I presume there may be.

Q. But you did not obtain quotations but from the one, did you?

A. No.

Q. Bryan is about ten miles from College Station, isn't it?

A. I don't know; some few miles.

Q. Aren't there some dealers right in College Station?

A. I think not.

Q. There is a lumber yard there, isn't there?

A. I am not certain.

Q. How much did you figure for the cost of pouring concrete?

A. Labor costs per cubic yard for this concrete \$7.02 plus \$.85 per cubic yard for the handling of the reinforcing steel.

Q. Or a total cost of \$8.05 a cubic yard for labor?

[fol. 974] A. No; \$7.87.

Mr. Griffith: That is including reinforcing steel work?

A. Yes.

Q. Well, that is just the labor—not the steel, isn't it?

A. That is right.

Q. Now, if I understand you correctly, Mr. Biddison, that \$7.87 is for labor only per cubic yard of concrete?

A. Yes, sir.

Q. Isn't that awfully high, Mr. Biddison?

A. Not for this class of work.

Q. This College Station structure is a typical structure so far as the concrete type of construction is concerned, is it not?

A. Yes.

Q. Now, you have some structures that are made of brick; is that right?

A. Yes; and quite a number that are wood frame with corrugated roof and sides; and quite a number that are steel frame and corrugated roof and sides.

Q. On Line J there are quite a number of those brick structures, are there not?

Mr. Griffith: I think you will find one at the top of page 1189, Mr. Fitzhugh.

Q. How much did you figure, Mr. Biddison, for the brick work on that station?

[fol. 975] A. For face brick work, \$75.80 per thousand installed; common brick work, \$39.80 installed.

Q. Now, what was the labor involved in each of those?

A. For face brick work, \$50.50 per thousand; for common brick, \$28.00 per thousand. The brick itself, for face brick, delivered at the job, including the cash discount allowance, the allowance for waste of ten per cent, and the store's expense of four per cent, is \$25.30; for common brick, \$11.80.

Q. Wherever you have brick work on these measuring station structures, have you used the same labor costs throughout, Mr. Biddison?

A. Used the same labor costs, but there would be a slight variation due to the difference in costs for mortar materials.

Q. That would not be a very substantial amount, would it?

A. No, sir; it would not be a large amount.

Q. Turn to the next item of property, Mr. Biddison, appearing on your appraisal,—“Other Transmission System Structures.” On a great many of these structures, Mr. Biddison, there appears a storm cellar. Was the concrete work—that is, the labor on the concrete work for these storm

cellars, figured at about the same rate as on the concrete work at the College Station structure that we were talking about a while ago of \$7.87 a yard?

[fol. 976] A. At mostly the same rate, except for the difference that these are not reinforced concrete structures; therefore, no expense for handling reinforcement is included.

Q. That would take about 75 or 85 cents off the cost of labor?

A. Roughly, it takes off about 85 cents a yard for labor. I can give you—

Q. That would leave the labor costs about seven dollars a yard?

A. I can give you the labor costs specifically applying to any one of these you may wish.

Q. Well, pick out one of them, then?

A. There is one at the Shamrock Warehouse site. I suppose that will be about as easy to look up as any of them.

Q. Well, without going to the trouble of looking that up, Mr. Biddison, it is in round figures, approximately seven dollars a yard, isn't it?

A. Yes.

Q. On these structures, now, where you show pipe storage racks, one of those is shown on page 1360, at a cost of \$528.89. The description is wood timbers on concrete piers, painted one coat. How heavy are the timbers used in making those pipe storage racks? I don't mean exactly—if you can just give us an idea?

A. Well, these might be as small as 4 x 8, or as large as 8 x 10.

Q. Pretty good sized timbers, though?

A. Yes.

[fol. 977] Q. Now, what labor rate did you use in the installation of these racks—that is, what is your installation cost for labor?

A. Do you refer to the labor charge per cubic yard on concrete, specifically, or—

Q. No, sir; I mean the cost of installing—let me see if I understand exactly what these racks are. They are concrete piers, aren't they, just a sort of wall of concrete built across and on top of those are piled these large timbers?

A. Yes.

Q. To support the pipe?

A. That is right.

Q. Is there any skilled labor or anything in connection with putting those wood timbers up?

A. Yes.

Q. Are they nailed together or dovetailed in or anything like that?

A. They are matched together at the ends, ordinarily. I can't state specifically as to this particular one, but generally the ends are morticed together; whether they are in this particular one or not I can't state. I know what the general practice is.

Q. Well, what I have in mind is finding the labor cost for the handling of these timbers.

A. These timbers are six by eight, priced at \$74.20 in place.

Q. Do your notes show how many of those six by eight timbers are used?

A. No, it does not. It shows 2400 feet board measure.

[fol. 978] Q. Well, do your notes show that they are morticed?

A. No.

Q. They are just laid up on the piers, aren't they?

A. Well, they are on the piers and they are fitted in to fit each other, but I don't know whether they are morticed in this particular job or not.

Q. Well, that would work out about thirty twenty-foot pieces, wouldn't it?

A. Let's see. Yes, about that. Well, I don't find the price on the six by eight lumber right now on this list.

Q. Well, can you approximate it, Mr. Biddison?

A. Yes. The erection labor on that would be about \$28.60 per thousand feet.

Q. That would make the labor run about \$72.00 on the whole job for this particular structure, would it not?

A. Yes; a little over that.

Q. Or, in other words, about two dollars and a half or two dollars and forty cents apiece for the laying of these timbers?

A. Yes.

Q. Now, on this same page, Mr. Biddison, you have a cottage—a four-room cottage with shiplap, ceiling and sills, papered, concrete foundation, at a unit cost of \$1629.14. Did you use, Mr. Biddison, in pricing out this cottage about the same general plan that you used in finding the cost for the city gate measuring station structures?

A. Yes, the same general plan.

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